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Thursday
September 1, 1988

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–20 of July 26, 1988

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State, United States Coordinator for Refugee Affairs

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, in order to meet unexpected urgent refugee and migration needs in Africa, I hereby determine that it is important to the national interest that $10.5 million be made available from the United States Emergency Refugee and Migration Assistance Fund (Emergency Fund) for assistance to persons in Africa, including, as appropriate, contributions to the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees (UNHCR), and other international organizations and voluntary agencies providing assistance to such persons. Within the total, approximately $5.0 million will be contributed to the UNHCR/League of Red Cross Societies for urgent African appeals and approximately $5.5 million will be contributed to the ICRC for Africa.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority.

This Determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, July 26, 1988.

cc: The Attorney General
The Secretary of Health and Human Services
Commissioner, Immigration and Naturalization Service

[FR Doc. 88–20005
Filed 8–30–88; 12:18 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

California Kiwifruit; Increase in Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule regarding California kiwifruit will increase and revise the authorized expenses under Marketing Order 920 for the 1988–89 fiscal period. Amending this budget will allow the Kiwifruit Administrative Committee to incur expenses reasonable and necessary to administer the program. Funds for this program will be derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1988 through July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–5610.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (17 CFR Part 920) regulating the handling of kiwifruit grown in California. This order 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 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 145 handlers of California kiwifruit under this marketing order, and approximately 1225 California kiwifruit producers. 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. The majority of the handlers and producers may be classified as small entities.

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

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Kiwifruit Administrative Committee (KAC) met on July 12, 1988, and revised the budget for the fiscal period which began August 1, 1988. The amended budget will total $129,025 instead of the currently approved $112,618. The amended budget will revise several major expense items, including an increase in field staff salaries from $29,650 to $41,010, and an increase in the pension plan from $2,860 to $5,337. Also, an additional $5,000 was recommended for the purchase of microwave ovens and digital scales, to be used by the KAC field staff to demonstrate a new method of measuring kiwifruit maturity. It will be useful to introduce the testing procedure to the handlers now, since it is under consideration as a future regulatory requirement.

The recommended assessment rate of $0.0125 is unchanged and the same as last year. Projected shipments of 8.7 million trays will yield $108,750 in assessment income. This income, when added to approximately $20,000 from the reserve, will be adequate to cover budgeted expenses.

While this action will impose some additional costs to 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 order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** (53 FR 30289, August 11, 1988). That document contained a proposal to amend § 920.204 to revise and increase expenses for the Kiwifruit Administrative Committee. That rule provided that interested persons could file comments through August 22, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses

which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

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

2. Section 920.204 is revised to read as follows: [*this section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations*]:

§ 920.204 Expenses and assessment rate.

Expenses of $129,025 by the Kiwifruit Administrative Committee are authorized and an assessment rate of $0.0125 per 7½ pound tray or equivalent is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: August 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–19935 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1951

Endorsement of Checks for Deposit in Concentration Banking System

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to reflect changes in the internal handling of collections. This action is necessary because of the requirement of the Federal Reserve Board's Regulation CC. FmHA offices under Regulation CC must endorse checks/money orders in a specific way. The intended effect of this amendment is to provide for clear and uniform endorsements of checks. This will facilitate the identification of the depository bank and expedite the return of unpaid checks.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, Room 5507, South Agriculture Building, Washington, DC 20250, Telephone (202) 475–4425.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and, since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves internal agency management and publication for comment is unnecessary.

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

For reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is related to the following programs that are subject to intergovernment consultations with State and local officials:

10.405—Farm Labor Housing Loan and Grants
10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414—Resource Conservation and Development Loans
10.415—Rural Rental Housing Loans
10.416—Soil and Water Loans
10.418—Water and Waste Disposal System for Rural Communities
10.419—Watershed Protection and Flood Prevention Loans
10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.422—Business and Industrial Loans
10.423—Community Facilities Loans
10.427—Rural Rental Assistance Payment (Rental Assistance)

In turn, the following programs to which this activity is also related, are not subject to Executive Order 12372:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low-Income Housing Loans (Section 502 Rural Housing Loans)
10.417—Very Low-Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants)
10.421—Indian Tribes and Tribal Corporation Loans
10.428—Economic Emergency Loans

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Loan programs-Agriculture, Loan programs—Housing and community development, Mortgages, Collection of loan payments and depositing payment through the Concentration Banking System (CBS), Financial Institutions.

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

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

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

Subpart B—Collections

2. Section 1951.55 is revised to read as follows:

§ 1951.55 Receiving and processing collections.

FmHA offices receive borrower payments either through the mail or in person in the form of checks, money orders, and cash. Payments are recorded on the appropriate accounting forms which are Form FmHA 451–2, Form FmHA 1944–9, or a payment coupon. These documents are used to transmit accounting information to the Finance Office. In addition, the FmHA office records payments on either a management system card, a servicing card, or a rental assistance tracking form, as appropriate.

Date: August 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88-19938 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-07-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 204

Housing Guaranty Standard Terms and Conditions

AGENCY: Agency for International Development (A.I.D.), IDCA.

ACTION: Final rule.

SUMMARY: Title 22 U.S.C. 2181–2183 establishes a housing guaranty program to assist developing countries. 22 U.S.C. 2182 authorizes the issuance of guaranties to eligible investors who meet certain prescribed criteria. The Standard Terms and Conditions set out in this Final Rule are those pursuant to which the United States of America would issue its guaranty.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Michael G. Kitay, Assistant General Counsel, Agency for International Development, GC/PRE, Room 3328 NS, Washington, DC 20523, Telephone: 202/647-8235 (FTS 647-8235).

SUPPLEMENTARY INFORMATION: Since the inception of the Housing Guaranty Program, the Office of Housing (now known as the Office of Housing and Urban Programs) of the Agency for International Development (A.I.D.) has used separately executed Contracts of Guaranty which contain the terms and conditions under which the United States of America will issue its guaranty. Preparing and executing separate Contracts of Guaranty is a cumbersome repetitive process, the purpose of which can be equally well served by publishing a standard rule. Once the rule (i.e., terms and conditions of A.I.D.'s guaranty) is published, a simple cross reference to the CFR rule in the guaranty legend signed on the reverse side of each guarantied note will suffice to advise noteholders of their contractual rights against A.I.D. as guarantor.

A proposed rule on this subject was published in the **Federal Register** on April 11, 1988, at FR 11872. The final date for receipt of comments was May 11, 1988. The final rule now published reflects technical changes resulting from comments received, but no substantive comments were received.

The rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory analysis under Executive Order 12291 because it involves a foreign affairs function of the United States.

As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) (1982) do not apply. An environmental impact statement is not required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

List of Subjects in 22 CFR Part 204

Loan programs, Foreign relations, Health, Housing and community development, Finance, Guaranteed loans.

Accordingly, a new Part 204 is added to Title 22, Chapter II of the Code of Federal Regulations as follows:

* * * * *

PART 204—HOUSING GUARANTY STANDARD TERMS AND CONDITIONS

Subpart A—Definitions

Sec.

204.1 Definitions.

Subpart B—The Guaranty

204.11 The guaranty.
204.12 Guaranty eligibility.
204.13 Non-impairment of the guaranty.
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204.15 Paying agent obligation.

Subpart C—Procedure for Obtaining Compensation

204.21 Event of default; Application for compensation; Payment.
204.22 Right of A.I.D. to cure default.
204.23 Payment to A.I.D. of excess amounts received by the lender or any assignee.

Subpart D—Covenants

204.31 Prosecution of claims.
204.32 Change in agreements.
204.33 A.I.D. approval of acceleration of notes.

Subpart E—Administration

204.41 Arbitration.
204.42 Notice.
204.43 Governing law.
Exhibit A—Application for compensation.
Exhibit B—Assignment.

Authority: 22 U.S.C. 2381.

Subpart A—Definitions

§ 204.1 Definitions.

Wherever used in these standard terms and conditions:

(a) "A.I.D." means the United States Agency for International Development or its successor with respect to the housing guaranty authorities contained in Title III, Chapter 2 of Part I of the Foreign Assistance Act of 1961, as amended (the "Act").

(b) "Eligible Note(s)" means (a) Note(s) meeting the eligiblity criteria set out in § 204.12 hereof.

(c) "Eligible Investor" means an "eligible investor" as defined in section 238(c) of the Act.

(d) "Lender" means an Eligible Investor who initially provides loan funds to the Borrower in exchange for Eligible Note(s).

(e) "Investment" respecting any Eligible Note means the principal amount of such Eligible Note.

(f) "Assignee" means the owner of an Eligible Note who is registered as an Assignee on the Note Register of Eligible Notes required to be maintained by the Paying Agent and who is an "Eligible Investor."

(g) "Outstanding Investment" respecting any Eligible Note means the Investment less the net amount of any repayments of principal of the Investment made by or on behalf of the Borrower or A.I.D.

(h) "Further Guaranteed Payments" means the amount of any loss suffered by the Lender or by any Assignee by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless the Lender and Assignee from taxes or governmental charges or any expense arising out of taxes or any other governmental charges relating to the Note in the country of the Borrower.

(i) "Loss of Investment" respecting any Eligible Note means an amount in Dollars equal to the total of the (1) Application, (2) Further Guaranteed Payments unpaid as of the Date of Application, and (3) interest accrued at the rate(s) specified in the Note(s) and unpaid on the Outstanding Investment and Further Guaranteed Payments to and including the date on which full payment thereof is made to the Lender or any Assignee.

(j) "Application for Compensation" means an executed application in the form of Exhibit A hereto which the Lender or any Assignee files with A.I.D. pursuant to § 204.21 of this part.

(k) "Applicant" means a Lender or Assignee who files an Application for Compensation with A.I.D.

(l) "Date of Application" means the effective date of an Application for Compensation filed with A.I.D. pursuant to § 204.21 of this part.

(m) "Business Day" means a date on which banks of the District of Columbia of the United States of America are open for business.

(n) "Guaranty Payment Date" means a Business Day not more than sixty (60) calendar days after the related Date of Application; provided that (1) compensation to the party filing the related Application for Compensation is due and payable on such date, in accordance with the terms of this Guaranty and (2) tender of assignment referred to in subsection 204.21(f) is made as therein provided.

Subpart B—The Guaranty

§ 204.11 The Guaranty.

Subject to these standard terms and conditions, the United States of America, acting through A.I.D., agrees to pay to any Lender or Assignee who has been determined to be an Eligible Investor compensation in Dollars equal to its Loss of Investment under the Eligible Note; provided, however, that no such payment shall be made for any such loss arising out of fraud or misrepresentation for which such Lender or Assignee is responsible or of which it had knowledge at the time it became such Lender or Assignee. This Guaranty shall apply to each Eligible Note registered on the Note Register required to be maintained by the Paying Agent.

§ 204.12 Guaranty eligibility.

(a) Eligible Notes only may be guarantied hereunder, and Eligible Investors only are entitled to the benefits of this Guaranty. Notes in order to achieve Eligible Note status must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower; and they must contain a guaranty legend incorporating these standard terms and conditions signed on behalf of A.I.D. by either a manual signature or a facsimile signature or an authorized representative of A.I.D. together with a certificate of authentication manually executed by a Paying Agent whose appointment by the Borrower is consented to by A.I.D. in a Paying and Transfer Agency Agreement.

(b) A.I.D. shall designate in a certificate delivered to the Lender and to the Paying Agent, the person(s) whose signature shall be binding on A.I.D. The certificate of authentication of the Paying Agent issued pursuant to the Paying and Transfer Agency Agreement shall, when manually executed by the Paying Agent, be conclusive evidence binding on A.I.D. that the Note has been duly executed on behalf of the Borrower and delivered.

§ 204.13 Non-impairment of the guaranty.

The full faith and credit of the United States of America is pledged to the performance of this Guaranty. The Guaranty shall not be affected or impaired by any defect in the authorization, execution, delivery or enforceability of any agreement or other document executed by the Lender, A.I.D., the Paying Agent or the Borrower in connection with the transactions contemplated by this Guaranty. This non-impairment of the guaranty provision shall not, however, be operative with respect to any amount arising out of fraud or misrepresentation for which the Lender or Assignee is responsible or of which it had knowledge prior to the time it became such Lender or Assignee.

§ 204.14 Transferability of guaranty; Note Register.

The Lender of any Assignee may assign, transfer or pledge the Eligible Notes to any Eligible Investor. Any such assignment, transfer or pledge shall be effective on the date that the name of the new Assignee is entered on the Note Register required to be maintained by the Paying Agent pursuant to the Paying and Transfer Agency Agreement. A.I.D. shall be entitled to treat the persons in whose names the Eligible Notes are registered as the owners thereof for all purposes of this Guaranty and A.I.D. shall not be affected by notice to the contrary.

§ 204.15 Paying agent obligations.

Failure of the Paying Agent to perform any of its obligations pursuant to the Paying and Transfer Agency Agreement shall not impair the Investor's or any Assignee's rights under this Contract of Guaranty, but may be the subject of action for damages against the Paying Agent by A.I.D. as a result of such failure or neglect; provided, however, that the Paying Agent is not authorized to issue and authenticate and have Notes outstanding at any time in excess of the principal amount of the Loan.

Subpart C—Procedure for Obtaining Compensation

§ 204.21 Event of default; Application for compensation; Payment.

(a) Within one year after an Event of Default, as this term is defined in an Eligible Note, the Lender or Assignee may file with A.I.D. an Application for Compensation in form as provided in Exhibit A. A.I.D. shall make the required payment not later than sixty (60) days after the Date of Application unless A.I.D. has cured the default under § 204.22.

(b) Guaranty Payment. On or before the Guaranty Payment Date, the Applicant shall tender assignment of all Applicant's right, title and interest as of the Date of Application in and to all sums for which Application has been made. A.I.D. shall accept the assignment and pay or cause to be paid to Applicant and compensation due to the Applicant pursuant to the Guaranty.

§ 204.22 Right of A.I.D. to cure default.

Within sixty (60) days after the Date of Application for Compensation, A.I.D. may at any time make payments to the Lender or any Assignee equal to all installments of principal due and unpaid under any Note (other than installments whose maturity has been accelerated), together with interest on the unpaid principal amount of the Note to the date of such payment by A.I.D., and any Further Guaranteed payments due and unpaid, and thereby prevent or cure any default under the Note. Upon such a payment by A.I.D., if the Lender or Assignee shall have accelerated such Note, such acceleration shall be immediately rescinded or, if such Note shall not have been accelerated, such Note shall not thereafter be accelerated as a result of such Event of Default.

§ 204.23 Payment to A.I.D. of excess amounts received by the lender of any assignee.

If the Lender or Assignee shall, as a result of A.I.D. paying compensation under this Guaranty, receive an excess payment, it shall refund the excess to A.I.D.

Subpart D—Covenants

§ 204.31 Prosecution of claims.

After an assignment to A.I.D. by the Lender or any Assignee pursuant to § 204.21(b), A.I.D. shall have exclusive power to prosecute all claims related to the outstanding Eligible Notes so assigned. If the Lender or such Assignee continues to have an interest in the outstanding Eligible Notes, the Lender or such Assignee and A.I.D. shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 204.32 Change in agreements.

Neither the Lender nor any Assignee will consent to any change or waiver of

any provision of any document contemplated by this Guaranty without the prior written consent of A.I.D.

§ 204.33 A.I.D. approval of acceleration of notes.

Without the prior approval of A.I.D., the Lender or any Assignee shall not accelerate any Eligible Notes held by it on account of the happening of an Event of Default other than failure to make a payment when due on the note.

Subpart E—Administration

§ 204.41 Arbitration.

Any controversy or claim between A.I.D. and the Lender or any Assignee arising out of this Guaranty shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 204.42 Notice.

Any communication to A.I.D. pursuant to this Guaranty shall be in writing in the English language, shall refer to the A.I.D. Housing Guaranty Project Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by A.I.D. at the address specified below:

Mail Address:

Office of Housing and Urban Programs, Agency for International Development, Washington, DC 20523.

Re: A.I.D. Housing Guaranty Project ____-HG-____ [1]

Telex Nos.: ITT 440001 (Answer back is AIDWNDC) RCA 248379 (Answer back is 248379 AID UR) WU 892703 (Answer back is AID WSH) WU 64154 (Answer back is AID 64154)

Fax No.: 202/647-4958

Cable Address: AID WASH DC

Other addresses may be substituted for the above upon the giving of notice of such substitution to each Lender or Assignee by first class mail at the addresses set forth in the Note Register.

§ 204.43 Governing law.

This Guaranty shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

[1] Enter title and numerical designation of the relevant A.I.D. Housing Guaranty Project as inscribed on each Note guaranty legend.

Exhibit A

Application for Compensation

Office of Housing and Urban Programs,
Agency for International Development,
International Development Cooperation Agency, Washington, D.C. 20523

Ref: Guaranty dated as of ____, 19____: A.I.D. Housing Project HG-_____

Gentlemen:

You are hereby advised that payment of $_____ (consisting of $_____ of principal, $_____ of interest and $_____ in Further Guaranteed Payments as defined in Section 204.01(i) of the Standard Terms and Conditions of the above-mentioned Guaranty [1]) was due on _____, 19____, on $_____ principal amount of Notes held by the undersigned of the _____ (the "Borrower"), issued pursuant to the Loan Agreement, dated as of _____, _____, between the Borrower and _____. Of such amount $_____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guaranty, the undersigned hereby applies, under Section 204.21 of said Guaranty, for payment of a total of $_____, representing $_____, the outstanding principal amount of the presently outstanding Notes of the Borrower held by the undersigned issued pursuant to said Loan Agreement, and $_____ in Further Guaranteed Payments,[2] plus accrued and unpaid interest thereon to and including the date payment in full is made by you pursuant to said Guaranty. Such payment is to be made at your office in Washington, DC.

[Name of Applicant]

By _____

Name _____

Title _____

Dated _____

Exhibit B

Assignment

The undersigned, being the registered owner of a Note in the principal amount of $_____ issued by the _____ (the "Borrower"), pursuant _____, and guaranty, dated as of _____, _____ the "Guaranty"), between the Lender and the United States of America, acting through the Agency for International Development ("A.I.D."), hereby assigns to A.I.D., without recourse (i) its entire right, title and interest in and to the Note of the Borrower referred to above (which Note is attached hereto), including its rights to unpaid interest on such Note, and (ii) its entire outstanding right, title and interest arising out of said Loan Agreement with respect to such Note, except the undersigned's right to receive payments under the Loan Agreement in respect of which A.I.D. has made no payment to the undersigned as of the date hereof.

[Name of Applicant]

[1] Strike inapplicable portion.

[2] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

By _____

Name _____

Title _____

Dated _____

Accepted:

UNITED STATES OF AMERICA

By _____

Name _____

Title _____

Dated _____

Date: August 22, 1988.

Fredrik A. Hansen,

Deputy Director, Agency for International Development, Office of Housing and Urban Programs.

[FR Doc. 88-19861 Filed 8-31-88; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of deferral of effective date for certain laboratories.

SUMMARY: This notice defers the effective date of the standard on occupational exposure to formaldehyde (29 CFR 1910.1048) for all laboratories except for those classified as anatomy, histology, or pathology laboratories, until January 1, 1989. This action is necessary to allow additional time for the Occupational Safety and Health Administration (OSHA) to reach a decision on whether to cover these laboratories under the scope of the Formaldehyde Standard or to include them under the Toxic Substances in Laboratories Standard, which has not yet been published.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3649, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On December 4, 1987, a revised standard for occupational exposure to formaldehyde was published in the **Federal Register** (52 FR 46168). That standard, among other things, divided all laboratories into two groups: (a) Anatomy, histology, and pathology laboratories, and (b) all

other laboratories ("other laboratories"). Effective February 2, 1988, the Formaldehyde Standard, as promulgated, covered occupational exposure to formaldehyde in anatomy, pathology, and histology laboratories. In addition, the revised permissible exposure levels became effective on that date for other laboratories. The effective date of the remaining provisions of the Formaldehyde Standard was deferred for these other laboratories until September 1, 1988.

OSHA believed that the deferred effective date would give it time to complete the generic rulemaking covering Toxic Substances in Laboratories (51 FR 26660, July 24, 1986). As part of that generic rulemaking, OSHA would decide whether formaldehyde exposures in other laboratories would be covered under the Formaldehyde Standard or the Toxic Substances in Laboratories Standard (51 FR 26660, July 24, 1986; see also 52 FR at 46289, December 4, 1987). OSHA deferred this decision, pending the completion of the generic Toxic Substances in Laboratories Standard, since it might be more appropriate to cover the use of formaldehyde in these other laboratories under the generic rule for laboratories than under the substance-specific Formaldehyde Standard.

The Toxic Substances in Laboratories Standard has not yet been finalized. OSHA projects that the final rule may not be issued until January 1, 1989. To avoid possible start-up costs which these other laboratories might incur to comply with the ancillary provisions of the Formaldehyde Standard which may be superseded by the generic laboratory standard, the effective date for coverage of other laboratories under the ancillary provisions of the Formaldehyde Standard is being deferred until January 1, 1989. In the interim period, other laboratories whose employees are exposed to formaldehyde need only comply with the revised permissible exposure limits in the Formaldehyde Standard.

Due to the short deferral period, notice and opportunity for public comment is impractical and unnecessary under 5 U.S.C. 553 and 29 U.S.C. 655(b).

Signed at Washington, DC this 29th day of August 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88-19904 Filed 8-31-88; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Participation Requirements for Residential Treatment Centers (RTC)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule amendment; Change of effective date.

SUMMARY: Amendment No. 12 to DoD 6010.8-R, published in the Federal Register on August 1, 1988 (53 FR 28873), clarified participation requirements and established a new reimbursement system for payment of RTC care to be in effect as of September 1, 1988. This amendment postpones the effective date of the final rule to October 1, 1988. This extension will provide sufficient time to meet with interested parties to discuss those issues and concerns surrounding the new reimbursement methodology.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. David Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303) 361-3537.

SUPPLEMENTARY INFORMATION: Revised participation agreements were sent out to the RTCs on July 29, 1988, in anticipation of final rule publication. The RTCs were required to sign and return the participation agreement with the Director, Office of Civilian Health and Medical Program of the Uniformed Services, or his designee, by August 25, 1988, would no longer be considered a CHAMPUS-authorized provider and no benefits would be paid for any services rendered by such facilities. This postponement extends the requirement for signature and return of the participation agreement to September 26, 1988. Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079; 1086; 5 U.S.C. 301.

2. The "Effective Date" section in the preamble is revised to read: "October 1, 1988."

August 29, 1988.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 88-19933 Filed 8-31-88; 8:45 a.m.]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3426-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On March 3, 1988 (53 FR 6845), USEPA proposed to approve revisions to the Indiana State Implementation Plan (SIP) for sulfur dioxide (SO_2) under USEPA's "parallel processing" procedures. The revisions consist of Indiana's SO_2 emission limits and plans for Jefferson, LaPorte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne Counties. USEPA's action was based upon revision requests which were submitted by the State to satisfy the requirements of Part D and Section 110 of the Clean Air Act (Act). USEPA, today, is approving the plans for all of these counties.

DATE: This final rulemaking becomes effective October 3, 1988.

ADDRESSES: Copies of the SIP revisions, comments, and support documentation are available at the following addresses for review: [It is recommended that you telephone Kent Wiley, at (312) 886-6034, before visiting the Region V office.]

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

A copy of today's revision is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kent Wiley, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6034.

SUPPLEMENTARY INFORMATION: On March 3, 1988, USEPA proposed to approve revisions to the Indian SIP for Jefferson, LaPorte, Marion, Posey, Sullivan, Vermillion, Vigo, and Wayne Counties. These plans consist of the provisions and requirements in Indiana's general SO_2 rule 325 IAC 7-1, approved or reinstated for these counties on January 19, 1988 (53 FR

1354), any SO_2 emission limits in 325 IAC 7–1–2 applicable in these counties, and the site-specific SO_2 emission limits and other requirements in 325 IAC 7–1–13 (Jefferson County), 325 IAC 7–1–12 (LaPorte County), 325 IAC 7–1–9 (Marion County), 325 IAC 7–1–14 (Sullivan County), 326 IAC 7–1–15 (Vermillion County), 326 IAC 7–1–10.1 (Vigo County), and 325 IAC 7–1–11 (Wayne County).[1]

Background information for USEPA's rulemaking action is contained in the March 3, 1988, Federal Register notice and will not be repeated here. The specific emission limitations and plan requirements for these counties are also discussed in the March 3, 1988, notice. In addition to the information identified in the notice of proposed rulemaking, this final action covers the following:

Jefferson County—February 3, 1988, submittal of final State promulgated rule

LaPorte County—February 3, 1988, submittal of final State promulgated rule. June 27, 1988, letter from the State clarifying the application of 325 IAC 7–1–3,1(c) in LaPorte (and Marion) Counties.

Marion County—February 3, 1988, submittal of final State promulgated rule. June 27, 1988, letter from the State clarifying the application of 325 IAC 7–1–3,1(c) in Marion (and LaPorte) Counties

Posey County—(No new information.)

Sullivan County—February 3, 1988, submittal of final State promulgated rule

Vermillion County—March 23, 1988, submittal of final State promulgated rule

Vigo County—August 1, 1988, submittal of final State promulgated rule

Wayne County—February 3, 1988, submittal of final State promulgated rule

For a discussion on the plans for these eight counties, the reader should consult the March 3, 1988, notice of proposed rulemaking.

(Note.—USEPA also proposed in the March 3, 1988, notice to redesignate portions of Marion County. USEPA will take final rulemaking action on this redesignation request in a future Federal Register notice).

Although USEPA today approves the emission limits for these sources on the ground that they satisfy the section 110 (and Part D, where applicable) requirements of the Clean Air Act, USEPA also today provides notice that the emission limits are subject to review and possible revision as a result of *NRDC v. Thomas*, 838 F.2d 1224 (1988). In that case the U.S. Court of Appeals for the D.C. Circuit held that USEPA had not adequately explained certain provisions of its July 8, 1985, stack height regulations and remanded these provisions to USEPA for further proceedings consistent with its opinion. If USEPA's response to the *NRDC* remand modifies the applicable July 8, 1985, provision(s), USEPA will notify the State of Indiana whether the emission limit for General Electric—Mt. Vernon in Posey County, PSI—Wabash River in Vigo County, and/or Hoosier Energy—Merom in Sullivan County must be reexamined for consistency with the modified provision. USEPA's approval of these facilities' emission limits today is intended to avoid delay in the establishment of federally enforceable emission limits for all sources in Posey, Vigo, and Sullivan Counties, respectively, while awaiting resolution of the *NRDC* remand. This issue is discussed further in the Stack Height section of today's notice below.

[1] There is no site-specific rule for Posey County. Posey County sources are, of course, subject to the general limits in 325 IAC 7–1.

Response to Public Comments

The Indiana Department of Environmental Management (IDEM), the Indianapolis Power and Light Company (IPALCO), the Peabody Coal Company (Peabody), and the Save the Dunes Council (SDC) submitted comments in response to the Notice of Proposed Rulemaking. A summary of the public comments, and USEPA's responses, are provided below.

LaPorte County

Comment: SDC objected to the proposed LaPorte County plan, especially the emission limit for Unit 12 at NIPSCO-Michigan City, for the following reasons:

(a) IDEM's air quality analysis did not consider lake effects, did not consider the synergistic effects of plant emissions and the cooling tower emissions leading to the formation of acid rain or acid mist, and relied on upper air data from Flint, Michigan.

(b) IDEM did not consider the impact of the increased allowable emissions from Unit 12 on the adjacent Indiana Dunes National Lakeshore, an area where, according to the commentor, the effects of air pollution on vegetation have been observed and the existing rainfall is already more acid than normal.

(c) The rule does not impose any restriction on annual hours of operation on Unit 12.

Response: USEPA has reviewed the issues raised by the commentor and has concluded that the proposed plan is approvable. Each issue is addressed below:

(a) IDEM followed USEPA's modeling guidelines pertaining to attainment demonstrations. The models and input data (including mixing height data from the closest National Weather Service Station, i.e., Flint, Michigan) were selected and applied consistent with USEPA's guidelines. Although USEPA's models are designed to predict concentrations under a wide variety of conditions, USEPA does not have refined techniques to address the additional effects (e.g., lake-induced fumigation and cooling tower interactions) cited by the commentor. Because the commentor has provided no evidence that these effects will result in ambient concentrations which violate any applicable requirements of the Act, USEPA accepts the State's attainment demonstration.

(b) While the proposed emission limit for Unit 12 (i.e., 6.0 pounds of sulfur dioxide per million British Thermal Units—lbs/MMBTU) does represent an increase from the previous State rule (i.e., 5.3 lbs/MMBTU), it is not an increase from the plan which USEPA conditionally approved on March 12, 1982, i.e., an emission limit of 6.0 lbs/MMBTU for Unit 12. On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside this approval, effectively revoking the federally enforceable emission limit. Thus, USEPA has proposed to establish a Federal limit where none now exists; not to increase a limit.

In any case, the Act requires demonstration that this limit ensures attainment and maintenance of the SO_2 NAAQS. Under section 109 of the Act, USEPA set the NAAQS to protect both the public health and welfare, e.g., vegetation. Thus, USEPA must assume, based on its analyses in setting the standards, that a proposed set of emission limits that protect the NAAQS will also protect the public health and welfare. As noted above, IDEM has provided a modeled demonstration of attainment of the primary and secondary SO_2 NAAQS, which USEPA is accepting as sufficient technical support for the LaPorte County plan.

(c) A restriction on hours of operation per year is required only if needed to demonstrate attainment of the NAAQS. The State's modeling analysis assumed all sources, including Unit 12, operating every hour of the year at full load. This modeling showed attainment of the 3-hour, 24-hour and annual NAAQS at the proposed emission limits under these conditions. Therefore, there is no need

to impose any restriction on annual operating hours on any source.

Marion County

Comment: In response to a discussion in USEPA's March 3, 1988, proposal on Indiana's Marion County dispersion modeling technique, IDEM emphasized that its "hybrid" modeling approach in Marion County is more conservative than if urban and rural areas were modeled separately and the monitored background concentrations were used. (For a description of this modeling approach, please see USEPA's proposal and technical support documents.)

Response: USEPA acknowledges and accepts the State's modeling approach in Marion County.

Comment: IPALCO objected to USEPA's proposed reliance on a February 1, 1988, letter from the State in the SIP. This letter clarified how the State intends to enforce its rules for sources with variable operating limits. IPALCO claimed that the letter is without legal status because it was never the subject of any public notice or hearing, never included in any administrative record or public hearing record, and does not reflect the intentions of the Indiana Air Pollution Control Board. Consequently, it cannot be regarded as a part of the Indiana SIP. IPALCO requested that USEPA (1) approve the Mario County plan, and (2) make it clear in the notice of final rulemaking that the February 1, 1988, letter is merely a statement of IDEM enforcement policy and that the primary method of compliance will be a stack test.

Response: USEPA agrees that the primary method of compliance will be a stack test and that this is the sole methodology which assures that the Indiana SO_2 plan will assure the attainment and maintenance of the SO_2 NAAQS.

USEPA acknowledges that IDEM's February 1, 1988, letter, as clarified by the State's June 24, 1988, letter, represents the State's enforcement policy. The policy explains how the 30-day averaging provisions of 325 IAC 7–1–3 will be applied to sources with variable operating limits. Because these letters reflect State policy and not State regulation, USEPA agrees that it is not necessary to include them within the SIP. USEPA does, however, intend to enforce the 30-day averaging provisions in 325 IAC 7–1–3 for the four affected sources consistent with the State's intent expressed in its February 1, 1988, and June 24, 1988, letters. USEPA notes that attainment and maintenance of the NAAQS are not dependent upon the methodology by which Indiana (and USEPA) enforces the 30-day averaging provisions of Indiana's rule, but on the stack test compliance methodology.

IDEM intends to submit this methodology, as detailed in its February 1, 1988, letter, to the Indiana Air Pollution Control Board for its consideration as a revision to Indiana rules. See IDEM's June 24, 1988, letter. USEPA will rulemake on this addition to the Indiana SIP upon the State's submittal of it as a revision.

Finally, the variable nature of the emission limits for IPALCO-Perry K, IPALCO-Stout, and Allison Gas Turbine in Marion County and NIPSCO-Michigan City in LaPorte County necessitates special recordkeeping and reporting requirements. The recordkeeping and reporting requirements included in the Marion and LaPorte County plans for these four sources are approvable.

Vermillion County

Comment: Peabody supported the proposed rule for Vermillion County. The Company noted that the March 1, 1989, compliance date will allow Peabody to continue to supply coal to the Public Service of Indiana Cayuga plant while it makes the changes to its mining operations necessary to meet the proposed emission limit in an economical manner.

Response: USEPA acknowledges this comment.

Vigo County

Comment: On February 3, 1988, IDEM submitted a revised Vigo County plan for parallel processing. IDEM stated in its comments that it anticipated that the Indiana Air Pollution Control Board would adopt this revised Vigo County rule in final on June 8, 1988. However, IDEM noted that the rule may not be promulgated and effective at the State level until at least August 1988. IDEM will attempt to expedite the State process.

Response: The Board did adopt the revised Vigo County plan on June 8, 1988, and submitted it to USEPA on the date the plan was published in the *Indiana Register*, August 1, 1988. USEPA is currently under court order to take final rulemaking on Vigo County by July 29, 1988. However, USEPA delayed slightly its final rulemaking action on Indiana's Vigo County plan in order to accommodate Indiana's delayed rulemaking schedule.

Stack Height Issues

Comment: IDEM questioned USEPA's characterization of the potential impact of the reent court remand of portions of USEPA's stack height regulations. IDEM believes that, even if the regulations are subsequently revised, it is not certain that the emission limits for the sources identified in the Notice of Proposed Rulemaking would change. IDEM disagreed with USEPA's implication that a change in limits is more likely than not.

Response: On January 22, 1988 the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *NRDC v. Thomas*, 838 F.2d 1224 (1988), regarding the stack height regulations published on July 8, 1985 (50 FR 27892). Subsequent petitions for rehearing were denied. Although the court upheld most provisions of the rules, three portions were remanded to USEPA for review: (1) Grandfathering pre-October 11, 1983, within formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)]; (2) Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and (3) Grandfathering of pre-1979 use of the refined "H + 1.5L formula height" [40 CFR 51.100(ii)(2)]. If USEPA were to change any of these provisions, then the emission limitations for some sources might need to be revised. At this time, USEPA has not determined whether or how the regulations would be changed. Consequently, it is premature to speculate on the need for or degree of emission limit changes. USEPA merely wishes to notify the State that the emission limits for some sources may be affected by the *NRDC* remand and may require changes at a later date.

General (Non-Court Specific) Comments

Comment: IDEM urged USEPA to approve the rules for these eight counties in final form.

Response: USEPA acknowledges this comment.

Conclusion: USEPA is approving Indiana's rules and the plans for Jefferson, Marion, LaPorte, Posey, Sullivan, Vermillion, Vigo, and Wayne Counties. This approval for LaPorte, Marion, Vigo, and Wayne Counties includes USEPA's approval of these counties as meeting, for SO_2, all the requirements of Part D.

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 (60 days from today.). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: August 2, 1988.

Lee M. Thomas,

Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, INDIANA

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

Authority: 42 U.S.C. 7401–7642.

§ 52.770 [Amended]

2. Section 52.770 is amended by removing the county name "Posey," from the list of counties in the last sentence in paragraph (c)(66).

3. Section 52.770 is amended by adding new paragraph (c)(67) to read as follows:

§ 52.770 Identification of plan.

(c) * * *

(67) On February 3, 1988, Indiana submitted its SO_2 plans for Jefferson, LaPorte, Marion, Sullivan, and Wayne Counties; on March 23, 1988, it submitted its SO_2 plan for Vermillion County; and on August 1, 1988, it submitted its SO_2 plan for Vigo County. These plans consist of the provisions and requirements in 325 IAC 7–1 approved or reinstated for these counties at Paragraph (c)(66), any SO_2 emission limits in 325 IAC 7–1–2 applicable in these counties [as incorporated by reference at (c)(66)(i)(A)], and the site-specific SO_2 emission limits and other requirements in 325 IAC 7–1–13 (Jefferson County), 325 IAC 7–1–12 (LaPorte County), 325 IAC 7–1–9 (Marion County), 325 IAC 7–1–14 (Sullivan County), 326 IAC 7–1–15 (Vermillion County), 326 IAC 7–1–10.1 (Vigo County), and 325 IAC 7–1–11 (Wayne County).

(i) Incorporation by reference.

(A) 325 IAC 7–1–13, Jefferson County Sulfur Dioxide Emission Limitations, as published in the January 1, 1988, *Indiana Register* (IR) at 11 IR 1251.

(B) 325 IAC 7–1–12, LaPorte County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1251.

(C) 325 IAC 7–1–9, Marion County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1242.

(D) 325 IAC 7–1–14, Sullivan County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1252.

(E) 326 IAC 7–1–15, Vermillion County Sulfur Dioxide Emission Limitations, as published on March 1, 1988, at 11 IR 1735.

(F) 326 IAC 7–1–10.1, Vigo County Sulfur Dioxide Emission Limitations, as published on August 1, 1988, at 11 IR 3785.

(G) 325 IAC 7–1–11, Wayne County Sulfur Dioxide Emission Limitations, as published on January 1, 1988, at 11 IR 1250.

(H) 326 IAC 7–1–1, Applicability, as published on August 1, 1988, at 11 IR 3785.

§ 52.773 [Amended]

4. Section 52.773(b) is amended by removing the phrase "strategies for Lake, LaPorte, Marion, and Vigo Counties satisfy" and replacing it with the revised phrase "strategy for Lake County satisfies".

5. Section 52.773 is amended by adding new paragraph (h) to read as follows:

§ 52.773 Approval Status.

* * * * *

(h) The Administrator finds that the SO_2 strategies for LaPorte, Marion, Vigo, and Wayne Counties satisfy all requirements of Part D, Title 1 of the Clean Air Act, as amended in 1977. See § 52.770(c)(67).

[FR Doc. 88–18374 Filed 8–31–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 300

[FRL–3436–5]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of sites from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of two sites from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NLP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida have determined that no further fund-finance remedial actions are appropriate at these sites and actions taken to date are protective of the public health, welfare, and the environment.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Allen Dotson, State Requirements Section, State and Local Coordination Branch, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone (202) 382–5755.

SUPPLEMENTARY INFORMATION: The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

The two sites EPA deletes from the NPL are:

1. Tri-City Oil Conservationist, Inc., Tampa, Florida
2. Varsol Spill, Miami, Florida.

An explanation of the criteria for deleting sites from the NPL was presented in section II of the March 14, 1988 Notice of Intent to Delete (53 FR 8223). A description of each of the two sites, and how each meets the criteria for deletion was presented in section IV of that notice.

The closing date for comments on the Notice of Intent to Delete was April 13, 1988. No comments were received concerning the two sites.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows.

Authority: Section 105, Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B [Amended]

2. The NPL Part 300; Appendix B is amended as follows:

In Group 9 remove:

Tri-City Oil Conservationist, Inc., Tampa, Florida

In Group 6 remove:

Varsol Spill, Miami, Florida

Upon publication of this Notice of Deletion, and pending publication of the next Final Update of the NPL, the NPL will consist of 797 sites.

Date: July 12, 1988.

Jack W. McGraw,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 88-19532 Filed 8-31-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[APD 2800.12 CHGE 57]

General Services Administration Acquisition Regulation; Implement FAC 84-31 and Monitoring Contractor Compliance with Subcontracting Plans

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12), is amended to revise § 519.502-1 to delete material which is repetitive of the Federal Acquisition Regulation (FAR) and inconsistent with the intent of Congress in enacting Pub. L. 99-661; to add §§ 519.706, 519.706-70 and 519.770-3 to permanently incorporate material in Acquisition Circular AC-87-3 into the regulation, and to cancel the circular. Section 519.770-1 is also revised to clarify to whom the SF-295 is to be submitted. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: September 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations on (202) 523-4916.

SUPPLEMENTARY INFORMATION:

Background

This rule was not published in the Federal Register for public comment because the rule is establishing internal agency procedure which has no impact on offerors or contractors and is implementing a higher level regulation which has already undergone the public comment process.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule simply deletes material which is inconsistent with the Federal Acquisition Regulation as amended by FAC 84-31 and revises GSA's internal operating procedures. The revision is not a "significant revision" as defined in FAR 1.501-1. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations, solicitation of public comments on this revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply. The rule does not contain information collection requirements that are subject to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Part 519

Government procurement.

1. The authority citation for 48 CFR Part 519 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. The table of contents for Part 519 is amended by adding §§ 519.706, 519.706-70 and 519.770-3 to read as follows:

Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

Sec.

519.706 Responsibilities of the cognizant administrative contracting offices.

519.706-70 Monitoring contractor compliance with subcontracting plans.

* * * * *

519.770-3 Reporting on contractual actions under section 211 of Public Law 95-507.

3. Section 519.502-1 is revised to read as follows:

519.502-1 Requirements for setting aside acquisitions.

Contracting officers shall set aside all procurements qualifying therefor, as provided in FAR Subpart 19.5. Where the contracting officer determines that a small business set-aside of a procurement is not feasible, the procedures defined in § 519.502-70 must be followed. Contracting officers shall periodically review individual set-asides to identify commodities and services suitable for class set-asides.

4. Sections 519.706 and 519.706-70 are added to read as follows:

519.706 Responsibilities of the cognizant administrative contracting officer.

519.706-70 Monitoring contractor compliance with subcontracting plans.

(a) Contract administration may be performed by the procuring contracting officer who awarded the contract or it may be delegated to an administrative contracting officer (ACO). When contract administration is delegated, the subcontracting plan must be included in the contract file transmitted to the contract administration office.

(b) The contracting officer administering contracts with subcontracting plans shall monitor timely receipt of SF 294 and/or SF 295 reports and review the reports for progress in meeting subcontracting plan goals. If goals are not met, the contractor must be required to explain the shortfall on the subcontracting reports and may be required to submit evidence of their outreach efforts to locate and provide subcontracting opportunities to small business and small disadvantaged business concerns. The requirement for compliance with plans may be fulfilled by evidence of satisfactory outreach efforts, as described in the plan, as well as by meeting plan goals.

(c) In the case of company-wide plans approved by GSA, the first contracting officer who enters into a contract with a company during the company's fiscal year approves the plan and monitors receipt of reports and compliance with the plan. This responsibility is generally assigned to the ACO if contract administration is delegated. Subsequent GSA contracts awarded during the company's same fiscal year and incorporating the previously approved plan will not require submission of subcontracting reports.

(d) In the case of company-wide plans approved by another agency, the first GSA contracting officer entering into a contract with the company during company's same fiscal year in which the plan was approved required the contractor to submit the SF 295 report and monitors receipt of the report. No other monitoring of this plan is required by GSA.

(e) Contractor compliance with plans must be documented in accordance with FAR 19.706 and must be considered by the contracting officer when determining contractor responsibility for future awards. In case on noncompliance, the contracting officer shall notify the Office of Small and Disadvantaged Business Utilization (AU) through the appropriate Small Business Technical Advisor (SBTA).

5. Section 519.770-1 is revised to

amend subparagraph (b)(1)(i) to read as follows:

519.770-1 Report forms.

(b) * * *

(1) * * *

(i) Contractors shall submit the SF 295 reports to the contracting office administrating the contract and to the Office of Small and Disadvantaged Business Utilization (AU).

* * * * *

6. Section 519.770-3 is added to read as follows:

519.770-3 Reporting on contractual actions under section 211 of Pub. L. 95-507.

(a) *Contracting office reporting requirements.* A quarterly report of the number and dollar value of contracts awarded in excess of $500,000 ($1 million for construction) requiring subcontracting plans must be prepared and submitted as indicated below. Report Control Symbol ADM 64 is assigned to this report. Negative reports are required.

(1) *Regional contracting offices.* The reports must be submitted to the regional Business Service Centers (BSC's) by the 10th calendar day after the end of each quarter. The BSC's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(2) *Central Office contracting offices.* The reports must be submitted to the appropriate SBTA by the 10th calendar day after the end of each month. The SBTA's will forward the reports to AU by the 20th calendar day following the end of the quarter.

(b) *Report format.* The following format is prescribed for the quarterly report.

Reporting Office _____

Quarter beginning _____

ending _____

Report on Contracting Actions Under Section 211 of Public Law 95-507

(contracts estimated or actual value over $500,000 [$1 million for construction])

Note.—Do not include Contracts with Small Business Concerns.

1. Total number of contracts awarded over $500,000 ($1 million for construction)	No._____ $ value _____
2. Contracts awarded over $500,000 ($1 million for construction) which contain subcontracting plans	No._____ $ value _____
Contracts awarded over $500,000 ($1 million for construction) without subcontracting plans. (Attach written justification for each contract awarded without a plan, see FAR 19.705-2)	No._____ $ value _____

(End of format)

Dated: August 22, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-19860 Filed 8-31-88; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 6)]

Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—1988 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is required by the regulators in 49 CFR 1002.3 to update user fees annually. In this proceeding the Commission adopts the 1988 user fee update as set forth in 53 FR 19969 (June 1, 1988). The Commission also adopts the proposals which increase some fees that were set at less than full cost in *Regulations Governing Fees For Services*, 1 I.C.C. 2d (60) (1984). The proposal to revise the costing and the resulting fee for Fee Item (100) involving the ICC Practitioner's Exam also is adopted here. However, the Commission has determined that any increase in the fees for complaint and declaratory order proceedings will be deferred pending further study.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-275-7428.

For Costing Information: William W. England, 202-275-7472, or, Michael A. Stolica, 202-275-7765.

TDD for the hearing impaired: 202-275-1721.

SUPPLEMENTARY INFORMATION:

The Commission has reviewed the 15 comments submitted in this proceeding. The commentors primarily object to the increased filing fee for formal complaints and other complaint proceedings [Fee Items (60), (61), (62)(i) and (76)] and declaratory orders [Fee Item (62)(ii)] because they believe that the increased fees will have a chilling effect on those who file such proceedings before the Commission. After a thorough review of the comments, the Commission has decided that resolution of the issues raised by the commentors with respect to these types of proceedings will necessitate a comprehensive review of all complaints and declaratory order proceedings filed after July 1, 1984. Since any revision of the Commission's fee schedule needs to be published by October 1, 1988, to be published in the 1988 edition of the Code of Federal Regulations sufficient time does not exist to complete such a review and still meet the publication deadline. Therefore, the Commission will defer the proposed increases for complaint and declaratory order proceedings pending further study of the issues raised in this proceeding with respect to those fees. The fees for Fee Items (60) and (62)(i) will remain at $500. Fee Items (61), (62)(ii) and (76) will remain at the direct labor levels of $1,500, $850 and $100, respectively.

The Commission adopts the proposals to increase the other capped or reduced fees and the 1988 fee update proposal. The revised costing and resulting fee for Fee Item (100) involving the ICC Practitioner's Exam also is adopted.

The Commission has determined that the decision to increase the capped and reduced fees will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for waiver of filing fee for entities which can make the required showing of financial hardship.

This decision will not have a significant impact upon the quality of the human environment or conservation of energy resources.

Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2227, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedures, Fees, Freedom of information.

It is ordered:

Title 49 of the Code of Federal Regulations is amended as set forth below.

Decided: August 29, 1988

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Simmons did not participate in the disposition of this proceeding. Commissioner Phillips was absent and did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

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

PART 1002—FEES

1. The authority citation for Part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "$17.00" in paragraph (b) is revised to read "$18.00".

3. In § 1002.1, the table in paragraph (f)(6) is revised to read as follows:

GS–1	$5.33
GS–2	5.80
GS–3	6.54
GS–4	7.34
GS–5	8.21
GS–6	9.15
GS–7	10.17
GS–8	11.26
GS–9	12.44
GS–10	13.70
GS–11	15.05
GS–12	18.04
GS–13	21.45
GS–14	25.35
GS–15 and above	29.82

4. In § 1002.2, paragraph (a) is revised to read as follows:

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in paragraph (a)(2) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract or other document is tendered for filing.

(2) When emergency temporary operating authority applications [Item 9] and emergency temporary operating authority extensions [Item 10] are initiated by telegram or telephone, the fee or fees are due when the OCCA–95 application is submitted to the appropriate Commission regional office.

(3) Fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or credit cards (Visa or Master Card).

* * * * *

5. In § 1002.2, paragraph (f) is revised to read as follows:

* * * * *

(f) *Schedule of filing fees.*

Type of Proceedings	Fees
Part 1: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 U.S.C. 1160.64	2,000
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number	30
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	150
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1160.107–1160.114	200
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a)	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	90
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	17
(11) Request for name change of carrier, broker, or household goods freight forwarder	8
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.4	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	60
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	20
(16) [Reserved]	
Part II: Non-Rail Applications to Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908	8,200
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved]	
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic	1,600
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	750
(22) An application for approval of a non-rail rate association agreement. 49 U.S.C. 10706	10,100
(23) An application for approval of an amendment to a non-rail rate association agreement	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	150
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	200
(26) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d)	150
(27) A petition for exemption under 49 U.S.C. 11343(e)	200
(28) [Reserved]	
(29) [Reserved]	
(30) [Reserved]	
(31) [Reserved]	
(32) [Reserved]	
Part IV: Rail Applications for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	2,600
(ii) Exempt transaction under 49 CFR 1150.31	550
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	3,200
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	1,800
(36) [Reserved]	
(37) [Reserved]	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act, bankrupt railroads or exempt abandonments under 49 CFR 1152.50)	2,100
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	150
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	650
(41) Exempt abandonments. 49 CFR 1152.50	800
(42) A notice or petition to discontinue passenger train service	8,200
(43) [Reserved]	
Part VI: Rail Application to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	6,900
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	4,700

Type of Proceedings	Fees
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exempt transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 CFR 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor Transaction	2,300
(iv) Exemption transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exemption transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(49) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343.	
(i) Major transaction	135,300
(ii) Significant transaction	27,000
(iii) Minor transaction	2,300
(iv) Exemption transaction [49 CFR 1080.2(d)]	550
(v) Responsive application	2,300
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b)	27,000
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	25,500
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706	
(i) Significant Amendment	4,700
(ii) Minor Amendment	30
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	250
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for exemption for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175. 49 U.S.C. 11301	1,200
(ii) An exempt transaction under 49 CFR 1175	550
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505	650
(56) An application for forced sale of bankrupt railroad lines. 49 CFR 1180.40–49, 45 U.S.C. 915	1,400
(57) [Reserved]	
(58) [Reserved]	
(59) [Reserved]	

Type of Proceedings	Fees
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A)	1,500
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	500
(ii) All other petitions for declaratory order	850
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increase	5,600
(64) A petition for exemption from filing tariffs by bus carriers	150
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	2,600
(66) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501	1,000
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501	1,000
(68) [Reserved]	
(69) [Reserved]	
(70) [Reserved]	
(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for aplications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster)	400
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	40
(74) The filing of tariffs, rate schedules and contracts including supplements	(1)
(75) Special docket application from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less)	50
(76) Informal complaint about rail rate application	100
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD)	2,700
(ii) An application for original qualification as self-insurer for cargo insurance	250
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a broker surety bond)	(2)
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR. 1057	300
(80) A petition for reinstatement of revoked operating authority	50
(81) [Reserved]	
(82) [Reserved]	

Type of Proceedings	Fees
(83) Petition for reinstatement of a dismissed operating rights application	250
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	(3)]
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	1,000
(86) Informal opinions about rate applications (all modes)	40
(87) [Reserved]	
(88) [Reserved]	
(89) [Reserved]	
(90) [Reserved]	
(91) [Reserved]	
(92) [Reserved]	
(93) [Reserved]	
(94) [Reserved]	
(95) [Reserved]	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	(4)
(97) Request for service list for proceedings	(5)
(98) Request for copies of the one-percent carload waybill sample	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	(6)
(100) Application fee for Interstate Commerce Commission Practitioners' Exam	60

[1] 7 per series transmitted.
[2] 10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
[3] 13 per document.
[4] 10 per delivery.
[5] 7 per list.
[6] 14 per movement verified.

[FR Doc. 88–19989 Filed 8–30–88; 1:37 pm]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export and American Ginseng Harvested in 1988–90 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plants species. Export of animals and plants listed in Convention Appendix II may occur only if the Scientific Authority has advised the permit-issuing Management Authority that (1) such export will not be detrimental to the survival of the species, and (2) this export will maintain the species throughout its range at a level consistent with its role in the ecosystem in which it occurs, and if the Management Authority is satisfied that

the animals or plants being exported were not obtained in violation of laws of their protection. Export of cultivated specimens of plants listed in Appendix II may occur under certificates issued by the Management Authority if it is satisfied that the plants being exported were artificially propagated.

This final rule announces the United States Scientific Authority and Management Authority findings on export of American ginseng (*Panax quinquefolius*), listed on Convention Appendix II, from certain States for the 1988–90 harvest seasons.

The U.S. Fish and Wildlife Service (Service) began to make multi-year findings for the export of American ginseng on a State-by-State basis when it issued Scientific Authority and Management Authority findings covering the 1982–84 harvest seasons. This was followed by multi-year findings for ginseng harvested from certain States for the 1985–87 harvest seasons.

The Service herein approves multi-year ginseng export form 19 States for the 1988, 1989, and 1990 harvest seasons (a season ends with the calendar year). The Service continues to seek data and information on topics described in this rule as a basis for determining whether to initiate or to continue approval of exports from permitted States for subsequent seasons.

Monitoring State ginseng programs since 1977 has shown the Service that States from which ginseng export has been approved will continue to satisfy Convention requirements. To ensure that this is so, the Service will continue annual monitoring in accordance with the procedures described herein. This monitoring will include analysis of data made available to the Service no later than May 31 every year from each State from which ginseng export is approved. These data document the most recent harvest and current status of ginseng management in that State.

The export of American ginseng is a necessary portion of a State's ginseng management program as the foreign markets for this species are dependent upon this final rule. The buying season will begin September 1, 1988, in the permitted States. The rule announced in this notice is to become effective upon publication so that export can begin as soon as possible. This will enable all these approved States to compete for the foreign markets needed to sell their ginseng and enable the ginseng farmers, diggers, and dealers to realize a greater monetary return for their product.

DATE: September 1, 1988.

ADDRESS: Please send correspondence concerning this document to the Office of Management Authority; U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 400, 1375 K Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop: Room 527 Matomic Building, Washington, DC 20240, telephone (202) 653–5948.

Management Authority: Marshall P. Jones, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4968.

Export Programs: S. Ronald Singer, Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329, telephone (202) 343–4963.

SUPPLEMENTARY INFORMATION: The Convention listing of this species (February 22, 1977 (42 FR 10462) and November 22, 1985 (50 FR 48212)) continues to regulate ginseng exports, including plants, whole roots, basically intact roots, and root chunks or slices.

Export of Convention Appendix II listed species from the United States may only occur under Federal permit or certificate issued upon approval of both the U.S. Scientific Authority and Management Authority. These responsibilities are functions of the U.S. Fish and Wildlife Service. The United States Department of Agriculture, Animal and Plant Health Inspection Service, is responsible for enforcing the Convention for terrestrial (nonmarine) plants (see final rule of October 25, 1984, 49 FR 42907).

This is the second of two publications concerning the Service's Scientific Authority and Management Authority findings on export of American ginseng collected in the 1988–1990 harvest seasons. The previous final rule for export of ginseng was published September 30, 1985 (50 FR 39691).

The States of Alabama and Pennsylvania have requested initial export approval of ginseng harvested from those States for the 1988–1990 harvest seasons. New York has requested approval for initial export approval of ginseng harvested in that State for the 1987–1990 harvest seasons.

Public Comment

No comment was received concerning the proposed rule published in the Federal Register on July 15, 1988 (53 FR 26802).

Scientific Authority Criteria

General criteria used by the Scientific Authority in advising the Management Authority on whether export will or will not be detrimental to the survival of species are as follows (originally described in a notice of July 11, 1977; 42 FR 35800):

1. Whether such export has occurred in the past and has or has not reduced numbers or distribution of the species, caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

2. Whether such export is expected to increase, remain constant, or decrease; and

3. Whether the life history parameters of the species and the relevant structure and function of its ecosystem indicate that present or proposed levels of export will or will not appreciably reduce the numbers or distribution of the species, or cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the Scientific Authority, in accordance with these general criteria, will continue to be based on the following information for each affected State, to the extent it is available in State data (with the States providing the sources and accuracy for new data, and indicating which information from previously submitted material is still valid) or from other suitable sources:

1. Historic, present, and potential distribution of wild ginseng by county using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss and/or protection of habitat; and map of locations and information on approximate acreage and percentage of wild ginseng that is on statute-protected lands where collecting is permanently prohibited. (Ginseng is considered as wild if it occurs in naturally perpetuated habitat, where the species is naturally propagated or with only limited planting of local seed by people at or near the site of collection with no subsequent tending of the species or habitat before harvest.);

2. Map of the approximate number or density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

3. Map of the average number of plants per population or patch, or local

abundance of wild ginseng, per county or region of the State; map and information on the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any recent changes from previous years or differences from historical population sizes;

4. A description of the State's annual harvest practices and controls on wild ginseng including a regulated harvest season (States are urged not to permit local harvest until seeds are mature), and harvest requirements such as minimum size or age of collected plants [3-leaf (3-prong) minimum recommended] and on planting seeds at the collection site;

5. Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors (diggers) in the State, and on the amount of wild ginseng plants and roots harvested in the State and the amount certified for export, in pounds (dry weight) per year;

6. Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of any trend in number of wild roots per pound (dry weight) or root sizes over previous years;

7. A description of the State's ongoing research program on wild ginseng and its progress, including a summary of results obtained; and

8. State maps showing those counties in which ginseng is commercially cultivated; and information on the amount of cultivated ginseng plants or roots harvested in the State and the amount certified in pounds (dry weight) per year. (Ginseng is considered cultivated when it is artificially propagated and maintained under controlled conditions, for example, the intensively or intermittently prepared or managed gardens or patches, under artificial or natural shade.)

Documents containing information that provided the basis for the nondetriment findings are available for public inspection at the Office of Scientific Authority at the address given above.

Management Authority Criteria

In addition to Scientific Authority advice that ginseng exports will not be detrimental to the survival of the species, the Management Authority must be satisfied that (1) the ginseng was not obtained in contravention of laws for its protection, and (2) it was of wild or of artificially propagated origin.

Criteria used by the Management Authority in determining a State program's qualifications for export are that the State has adopted and is implementing the following regulatory measures (see publication of September 30, 1985, 50 FR 39691).

1. A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

2. State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng and provide copies of such records of commerce to the State in a signed and dated statement at least every 90 days (generally within 15 days of the end of each quarter of the calendar year) and a year-end accounting;

3. Dealer records required to show date of transaction, whether plants and roots were wild or artificially propagated, if roots were dried or green (fresh) at time of transaction, weight of roots, weight or number of plants, State of origin of plants or roots, and the identification numbers of the State certificates used to ship ginseng from the State of origin. The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested;

4. Inspection and certification by State personnel of *all* ginseng harvested in the State and of the dealer's ginseng commerce records to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. (Experience has shown the value of an inspection and certification program by a State official who can verify both the weight of the ginseng roots (weight or number of plants) in question and that the roots or the plants were legally taken from the wild or artificially propagated in that State);

5. Ginseng unsold by March 31 of the year after harvest must be weighed by the State and the dealer, digger, or root owner given a State weight receipt. Future State export certification of this stock is to be issued against the State weight receipt;

6. The certificate of origin forms must remain in State control until issued at certification and must contain the following information:

—State of origin,
—Serial number of certificate,
—Dealer's State registration number,
—Dealer's shipment number for that harvest season,
—Year of harvest of ginseng being certified,
—Designation as wild or artificially propagated plants or roots,
—Designation as dried or green (fresh) roots, or live plants,
—Weight of roots and plants (or number of plants) separately expressed both numerically and in writing,
—Verified statement by State ginseng official that the ginseng was obtained in that State in accordance with State law of that harvest year,
—Name and title of State-certifying official,
—Date of certification, and
—Signatures of both dealer and State official making certification.

This certificate should be issued in triplicate, with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference; and

7. State regulations that (a) prohibit export of its ginseng from the State without certification by the State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification. Failure to have such ginseng certified will render this root illegal for export.

Each State from which ginseng export is approved shall make program information, identified by harvest year, available on an annual basis to the Service's Office of Management Authority no later than May 31 (for example, the 1988 State ginseng data should be available by May 31, 1989). These data should be sufficient to satisfy the Scientific Authority criteria and should contain the following information to satisfy the Management Authority criteria.

1. Reaffirm State ginseng program and indicate modifications, if any, concerning:

(a) State ginseng laws and regulations;

(b) Season of ginseng harvest and commerce;

(c) State dealer, digger, and/or grower license or registration rules;

(d) Sample of required ginseng-related licenses, including cost of license and dates of authorized use;

(e) Fees for any ginseng-related license or registration;

(f) Dealer, digger, or grower record-maintenance and reporting requirements;

(g) Sample of current year dealer certificates and reporting forms;

(h) Description of State certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or out of the State; and

(i) Name, address, and telephone number of State official to contact concerning such information.

2. The State data should also include information on the following:

(a) Pounds dry weight of wild and of cultivated ginseng roots and weight or number of live plants (i) harvested and (ii) certified by the State, and (iii) the pounds of each bought and sold from in-State and out-of-State sources;

(b) Indicate how dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this type of commerce is controlled by State law;

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies; and

(d) Sample of current-year State certificate of legal take and origin.

Documents containing information that provided the basis for the Service's findings of legal take are available for inspection at the Office of Management Authority at the address given above.

Program for Artificially Propagated Ginseng

In an October 21, 1980, rule (45 FR 68944), the Service announced it would approve export of artifically propagated ginseng only from States for which export of wild-collected ginseng was approved because those States had programs that could adequately document the source of the ginseng. The Service announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service will continue to consider granting such approval.

Previous Export Approval

The export of wild and/or cultivated ginseng harvested from 1982 through 1984 was approved from States listed in 50 CFR 23.51(e). On September 30, 1985, (50 FR 39691) the Service approved multi-year export of 1985–1987 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that otherwise satisfied all other criteria of the Scientific Authority and Management Authority.

Muti-year Findings

From monitoring State ginseng programs and the biological status of the plant since 1977, the Service finds that States previously approved for the export of ginseng would continue to satisfy Convention requirements. The Service grants export approval to all previously approved States.

The States of Alabama and Pennsylvania have requested initial export approval of ginseng harvested from those States for 1988–1990 harvest seasons. New York submitted a request for initial export approval of ginseng harvested in that State for the 1987–1990 harvest seasons. However, New York neither certified nor weight-receipted its 1987 harvested ginseng for export so 1987 New York harvested ginseng may not be exported from the United States. After reviewing the information provided by Alabama, New York, and Pennsylvania, the Service finds that the export of ginseng harvested in these States during the 1988–1990 harvest seasons will not be detrimental to the survival of the species. Therefore, the Service grants ginseng export approval to Alabama, New York, and Pennsylvania for the 1988–1990 harvest seasons.

States wishing to initiate export programs for ginseng harvested in 1989 or thereafter should begin work with the Service as soon as possible so that their finalized application can be submitted by March 31 of the year in which they anticipate certifying harvested ginseng for subsequent export.

Service ginseng export approval would be subject to revision prior to the 1989 and 1990 harvest seasons in any approved State if a review of information reveals that Management Authority or Scientific Authority findings in favor of export must be changed. The Service does not grant general approval for export of ginseng originating in any State not named in 50 CFR 23.51(e) because: (1) The species does not occur there, (2) no harvest of the species is allowed by the State, (3) the Service does not have current information needed for Management Authority or Scientific Authority findings, or (4) the State has not applied for such export approval. To ensure Service-approved States maintain successful programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State programs and of information on the status of ginseng populations, especially by the evaluation of annual data from the States and of export documents returned from the ports. Notices will be published in the **Federal Register** in 1989 and 1990 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal Convention documents are necessary to export wild or artificially propagated ginseng plants or roots. Applications for these documents should be sent to the Office of Management Authority at the address given above.

Ginseng eligible for export may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture ("USDA ports") and designated by the U.S. Department of Interior (see 49 FR 49238; October 25, 1984). For each export, the exporter must present to the Port Inspector of the U.S. Department of Agriculture Animal and Plant Health Inspection Service, Plant Protection and Quarantine, proof that the exporter has a valid General Permit, available from the U.S. Department of Agriculture, and the following:

(1) Ginseng plants or roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for American ginseng imported to the United States). An exporter or dealer may split an original State certificate by striking a line through the original weight, and identify by numbers and writing the lower weight or ginseng being imported. This change in certificate weight must be certified with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter. The modified State certificate must bear this certification in original ink form;

(3) Three completed Federal Convention export documents; and

(4) One copy of executed shipper's invoice.

The Plant Protection and Quarantine port inspector may sign and validate the Convention documents only after a satisfactory inspection of the State certificate of origin, shipper's invoice, Convention export documentation and contents of the shipment. Once the Convention documents are validated, the inspector will then forward State certificates, one Convention export document, and shipper's invoice to the Office of Management Authority for recordkeeping and reporting. The Second Federal export document is for the exporter, and the remaining Convention export document will authorize the international shipment of

the ginseng and will be collected by the importing country.

The Department has determined that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act for making these findings and rule effective immediately. This publication represents the final administrative step in authorizing the export of ginseng in accordance with the Convention. This action has been delayed because of the need to gather and evaluate the best available information on the species. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the harvest season that already has begun. A delay could adversely affect the species by reducing compliance with State certification requirements. Good cause also exists for making these findings effective as soon as possible to avoid economic injury to individual diggers, dealers, or other small entities that are directly affected by the findings. Because this final rule removes a restriction on export, it can be made effective immediately upon publication under 5 U.S.C. 553(d)(1). It should be noted that making these findings and rule effective immediately will not adversely affect the species involved in view of the findings on nondetriment contained herein.

Note.—The Department has determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. The Department determined that the findings for the 1978–87 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Exporters normally derive their product from the ginseng harvested in a number of States. Therefore, the approval or disapproval of wild ginseng export from any one State would not significantly affect the industry. Furthermore, because the rule treats exports on a State-by-State basis and approve export in accordance with State management programs, the rule would have little effect on small entities in and of itself. For the 1988 through 1990 harvest seasons, the Service has analyzed the impacts and again concludes that this would not be a major rule and would not have a significant economic effect on a substantial number of small entities. This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*; 87 Stat. 884, as amended), and was prepared by S Ronald Singer, Office of Management Authority, and Dr. Wayne Milstead, Office of Scientific Authority.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, Part 23, Subchapter B of Chapter 1, Title 50, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

Subpart F—Export of Certain Species

2. In § 23.51 American ginseng (*Panax quinquefolius*) paragraph (f) is removed and paragraph (e) is revised to read as follows:

§ 23.51 American Ginseng (Panax quinquefolius).

* * * * *

(e)(1) 1982–1990 harvests (wild and cultivated roots for each year unless noted).

Harvest Years

State (1)	1982	1983	1984	1985	1986	1987	1988	1989	1990
Alabama	–	–	–	–	–	–	x	x	x
Arkansas	x	x	x	x	x	x	x	x	x
Georgia	x	x	x	x	x	x	x	x	x
Indiana	x	x	x	x	x	x	x	x	x
Illinois	x	x	x	x	x	x	x	x	x
Iowa	x	x	x	x	x	x	x	x	x
Kentucky	x	x	x	x	x	x	x	x	x
Maryland	x	x	x	x	x	x	x	x	x
Minnesota	x	x	x	x	x	x	x	x	x
Missouri	x	x	x	x	x	x	x	x	x
North Carolina	x	x	x	x	x	x	x	x	x
New York	–	–	–	–	–	–	x	x	x
Ohio	x	x	x	x	x	x	x	x	x
Pennsylvania	–	–	–	–	–	–	x	x	x
Tennessee	x	x	a	x	x	x	x	x	x
Vermont	a	a	x	x	x	x	x	x	x
Virginia	x	x	x	x	x	x	x	x	x
West Virginia	x	x	x	x	x	x	x	x	x
Wisconsin	x	x	x	x	x	x	x	x	x

(1) Service export-approved State.
x Exported approval granted for wild and cultivated ginseng.
– Export not requested or not granted.
a Export approval only for artificially propagated (cultivated) ginseng.

(2) Conditions on export: All plants and roots must be documented as to State of origin, season of collection, and dry or green (fresh) weight. The State must certify whether roots and plants originated in that State, are wild or cultivated (artificially propagated) specimens, and were legally obtained in a particular season. Such State certification, a current Federal export document, an executed dealer or exporter's invoice, and the ginseng must be presented upon export. All other export procedures must be followed as described by the Service in this rule. The State must maintain ginseng management and harvest programs, as described by the Service in this rule, and

annual ginseng program data for the preceding harvest season should be available to the Office of Management Authority by May 31 of each year. Export procedures must be completed as outlined and discussed in this paragraph.

Note.—American ginseng purchased from non-export approved States by State-registered ginseng dealers for domestic use and commerce must be reported to the State of registration, along with all other ginseng commerce. Such ginseng is not eligible for export from the United States and must be dealer-maintained physically separated from that ginseng eligible for export from this country so that there is no chance of intermingling the specimens.

Date: August 25, 1988

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19994 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 80852-8152]

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Final rule, technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule to implement a technical amendment to the regulations requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the Southeastern United States to use measures to reduce the incidental catch and mortality of sea turtles in shrimp trawls. This rule adds an additional "soft" turtle excluder device (TED) to the approved TEDs. The intended effect is to increase the options of fishermen required to use TEDs.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813-893-3366, or Charles Karnella, 202-673-5349.

SUPPLEMENTARY INFORMATION:

a. Background

The Secretary of Commerce issued a final rule on June 29, 1987 (52 FR 24244) which requires shrimp trawlers 25 feet and longer to use qualified turtle excluder devices (TEDs) in certain offshore waters of the Southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

The final rule was designed to reduce the incidental catch and mortality of sea turtles in shrimp trawls. The rule allows the use of four types of TEDs. It also contains a provision for qualification of new TEDs if these TEDs are tested according to specified procedures and found to be 97 percent effective in releasing sea turtles from trawls. On October 5, 1987, the Secretary issued a final rule (52 FR 37152) which changed the definitions of "inshore" and "offshore" to more clearly delineate the two areas, and added an additional "soft" TED (known as the "Morrison TED") to the approved turtle excluder devices.

b. Soft TED Testing

In October 1987, tests of three "soft" TEDs were conducted in the Cape Canaveral, Florida, navigation channel aboard the University of Georgia research vessel R/V GEORGIA BULLDOG. The tests were conducted under NMFS supervision according to a research protocol developed by NMFS. Of the three "soft" TEDs tested, the Parrish TED was found to effectively release turtles.

Steve Parrish, the designer of the Parrish TED, and Jim Bahen, Marine Advisory Service Agent with the University of North Carolina (UNC) Sea Grant Program, asked NMFS to test this device for possible certification. UNC Sea Grant provided NMFS with results of seven comparative tows (Parrish TED on one side, standard net on the other) for North Carolina. In those tests, the net equipped with the Parrish TED caught 26 percent less shrimp than the standard net. These are the only data NMFS has on shrimp retention when the Parrish TED was used under normal shrimping operations.

During the turtle exclusion test at Cape Canaveral, the Parrish TED captured a sea turtle in the early stages of the test. The unit was then modified by increasing the size of the exit opening, removing one of the two bungee cords holding the webbing flap over the opening, and reducing the cord tension of a second bungee cord. The modified Parrish TED was tested against a standard net during 10 paired tows; no turtles were captured in the Parrish TED while the control net captured 42 turtles. These catch rates satisfied the requirements for a 97 percent turtle exclusion rate at the 90 percent confidence level.

However, during the Canaveral testing, the modified Parrish TED caught 79.5 percent fewer shrimp than the standard net. The shrimp catch during those tests was too small to be significant, two pounds in the Parrish TED net compared to nine and one half pounds in the control net. The Parrish TED also released 73.3 percent of the total biomass when compared to the control net. Based on available data, NMFS believes that shrimpers may experience a substantial shrimp loss when using this device. Anyone with questions concerning operation of the Parrish TED should contact Steve Parrish (919/842-9179) or Jim Bahen (919/458-5498).

The modified Parrish TED (Figure 7) consists of three major components (the extension, the deflector panel and the frame) which are installed between the body of the trawl and the bag. Turtles are released through an opening in the bottom of the TED. The Parrish TED as installed in a net extension costs about $115.00.

c. TED Certification

Because the modified Parrish TED was found to be at least 97 percent effective in releasing sea turtles from trawls, NMFS adds this device as an approved TED for use whenever or wherever a TED is required.

Shrimp loss with some TEDs has been a complaint of some fishermen who have been required to use them. Although NMFS believes that the majority of TEDs now certified do not have a significant loss when used properly, the Morrison and Parrish soft TEDs in the few shrimp retention studies completed, show shrimp losses of 17 and 26 percent respectively. NMFS will continue to certify TEDs that meet turtle exclusion requirements and will provide information about shrimp loss gathered during the testing of the TED. In this way, shrimp fishermen will be provided the widest latitude in complying with the requirements of the regulations. They may use any of the six approved TEDs that meet their fishing strategies, or they may limit tow time in inshore waters and, on smaller vessels, in offshore waters.

In the appendix to the final rule published on June 29, 1987, sampling guidelines and statistical procedures for TED certification are described. These procedures test only for turtle exclusion.

Classification

This action is in compliance with Executive Order 12291. Notice and

comment on this final rule are unnecessary and contrary to the public interest because it merely gives the public notice that the Parrish TED has passed the test and may be used lawfully. Delayed effectiveness is not required because this technical amendment relieves a restriction.

As no statute requires notice and comment on this final rule, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

The rule does not contain a collection-of-information requirement for the purpose of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 227

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

William Matuszeski,

Executive Director.

For the reasons set out in the preamble, 50 CFR Part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, a new paragraph (e)(4)(ii)(F) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(F) *Parrish TED (Figure 7).* This TED is a unit that is installed between the body of the trawl and the bag. The unit consists of three major components: the extension, the deflector panel, and the frame. The extension is a piece of netting of 1¾ inch stretch mesh, No. 15 thread, treated nylon, measuring 150 meshes by 100 meshes. When installed in the trawl, the extension is cylindrically shaped with a circumference of 150 meshes and a depth of 100 meshes. The deflector panel, which slopes down the inside of the extension, is a rectangular piece of 8 inch stretched mesh, 3 mm diameter, braided polyethylene netting. The deflector panel measures 8 meshes across the leading and trailing edges of the deflector panel and is 15½ meshes deep. The 8 meshes at the leading edge of the deflector panel are sewn into the small mesh (1¾ inch) of the extension 3 meshes down from the top edge of the extension. The 8 meshes at the trailing edge of the deflector panel are attached to the top edge of the frame. Each side edge of the panel is attached at 5⅝ inch intervals to a ⅜ inch diameter, 3 strand polydacron rope which is attached to the small mesh of the extension at 5⅝ inch intervals. The deflector panel must form a complete barrier to large objects inside the extension forward of the frame. The frame is a rectangular ⅜ inch diameter welded galvanized steel rod unit with a 40 x 4 inch opening and small pad eyes at the top corners. The trailing edge meshes of the deflector panel are attached to the top of the frame, and 50 lateral meshes of the extension netting (1¾ inch mesh) are centered and sewn to the bottom and sides of the frame. The escape opening consists of a lateral slit, measuring 40 meshes, cut from the leading edge at the bottom of the frame. A 50 inch, ¼ inch diameter, bungee cord is laced through the meshes at the cut. Opposing ends of the bungee cord are secured to the opposing pad eyes at the top of the frame. One end of a flap measuring 50 meshes across by 30 meshes deep is attached to the meshes at the cut.

BILLING CODE 3510-22-M

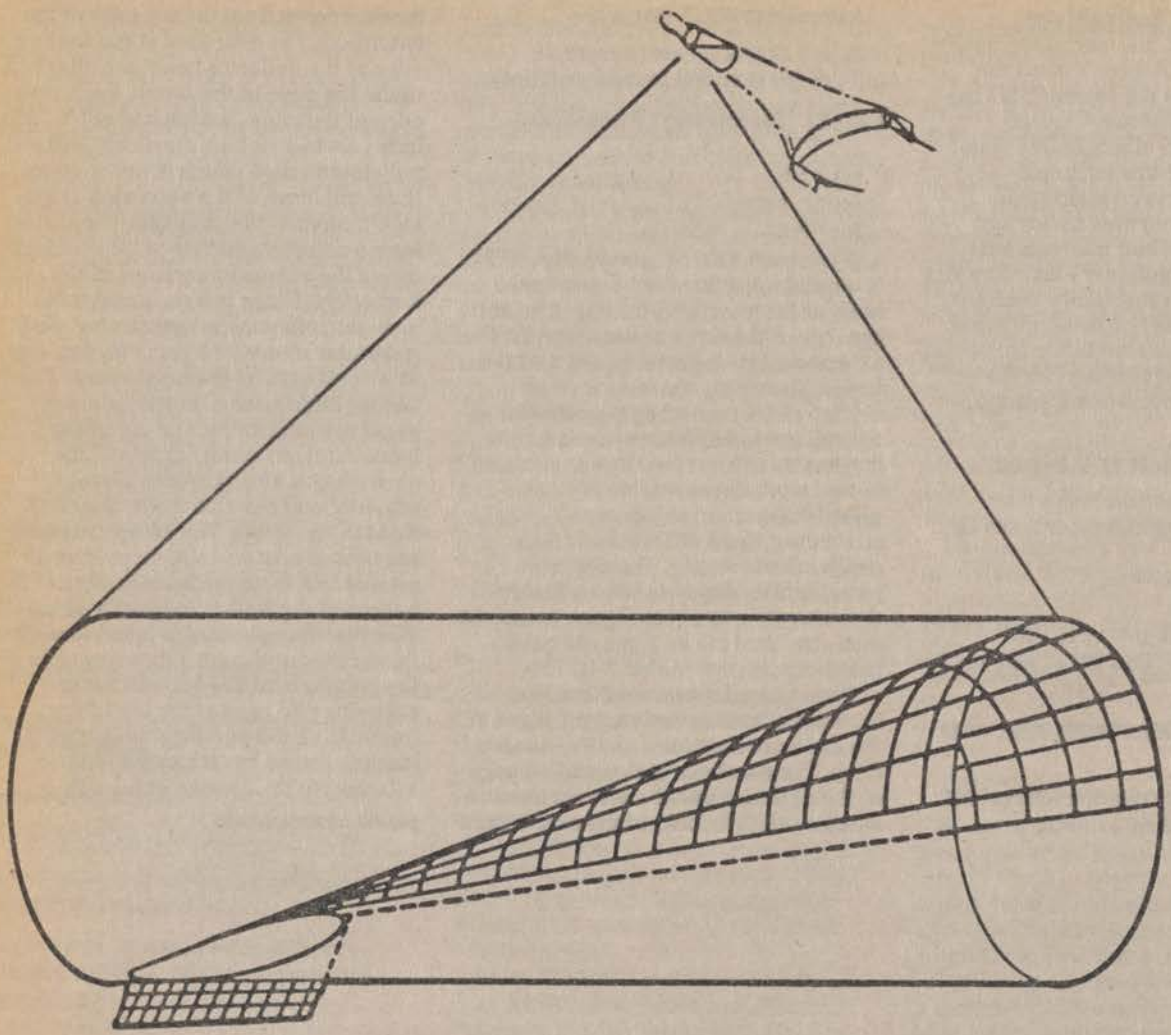

Figure 7. (PARRISH T.E.D.)

[FR Doc. 88–19652 Filed 8–31–88; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 53, No. 170
Thursday, September 1, 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 Part 1124

[DA-88-120]

Milk in the Oregon-Washington Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites public comments on a proposal to suspend for the months of September through November 1988 the requirement that at least 40 percent of a supply plant's receipts be delivered to pool distributing plants or be disposed of as fluid milk products on routes in the marketing area in order to qualify the supply plant for pooling under the Oregon-Washington order. The action was requested by a cooperative association that represents producers who supply a significant amount of milk for the market. The association claims that this action is necessary to assure that its member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's fluid milk sales.

DATE: Comments are due on or before September 8, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Department Regulations 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Oregon-Washington marketing area is being considered for the months of September through November 1988:

In § 1124.9(b), the words "not less than 40 percent in any month of September through November and" and "other".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1988 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of September through November 1988 the requirement that at least 40 percent of a supply plant's receipts be delivered to pool distributing plants or disposed of as fluid milk products on routes in the marketing area in order to qualify the supply plant for pooling. The suspension was requested by Tillamook County Creamery Association (TCCA), a cooperative association that represents a large number of the market's producers.

According to the cooperative, conversion of a significant number of TCCA's manufacturing grade producers to Grade A on July 1, 1988, increased the cooperative's grade A milk supply without a comparable increase in milk sales. TCCA states that as a result of this increase it will be impossible for the cooperative to meet the 40-percent delivery requirement during the months of September through November 1988 without inefficient, costly, and quality-reducing milk transfers to fluid milk plants in the market. The cooperative states that it would be forced to move milk in an uneconomic and inefficient manner solely to maintain the pool status of its producers who historically have supplied the fluid needs of the Oregon-Washington marketing area.

Accordingly, it may be appropriate to suspend the requested order language for the months of September through November 1988.

List of Subjects in 7 CFR Part 1124

Milk marketing orders. Milk. Dairy products.

The authority citation for 7 CFR Part 1124 continues to read as follows:

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

Signed at Washington, DC, on August 25, 1988.

J. Patrick Boyle,
Administrator.

[FR Doc. 88-19936 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1918

[Docket No. C-02]

General Safety and Health Programs; Request for Comments and Information

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period.

SUMMARY: This notice extends the time in which written comments may be submitted in response to the request for comments and information which OSHA issued on July 15, 1988 on general safety and health programs used by employers in general industry, shipyard employment, and longshoring.

DATE: Written comments must be postmarked by September 28, 1988.

ADDRESS: Comments must be submitted in quadruplicate to the Docket Office, Room N–2439, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–7894. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA issued a request for information and comments on July 15, 1988 (53 FR 26790) which requested comments and information which could lead to the development and promulgation of an occupational safety and health guideline or other means of encouraging and assisting employers in general industry, shipyard employment, and longshoring to use management methods to provide workplaces free of recognized hazards. Interested persons were given until August 29, 1988 to submit comments pertaining to the request.

OSHA has received requests for an extension of the comment period, based on the complexity of the subject matter and the extent of the proposed guidelines. To ensure the fullest participation of interested persons, OSHA is extending the period in which written comments may be submitted on the guidelines until September 28, 1988. The comments should be sent in quadruplicate to the Docket Office at the above address. Commenters are requested to provide substantive data and documentary evidence in support of their views and arguments on the proposals.

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 under Sec. 41, Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 6754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Signed at Washington DC, this 26th day of August, 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88–19896 Filed 8–29–88; 12:55 pm]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3439–6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Supplemental proposed rulemaking.

SUMMARY: On November 21, 1986 (51 FR 42111), USEPA proposed to disapprove a revision to the Illinois State Implementation Plan (SIP) for total suspended particulates (TSP). The proposed revision pertains to a variance from Illinois Pollution Control Board (IPCB) Rule 203(d)(5)(J) until July 1, 1986, for hot scarfing operations at LTV Steel Corporation's (LTV) Chicago Works. USEPA's action was based upon a revision which was submitted by the State. During the public comment period, a comment received from the legal counsel of LTV caused USEPA to re-evaluate its proposed rulemaking action. Today's **Federal Register** notice supplements USEPA's earlier notice of proposed rulemaking with additional information. It announces a revised proposed rulemaking action to approve the SIP revision as requested by the States. Finally, it solicits public comment on the requested SIP revision and USEPA's proposed approval of it.

The USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less (PM_{10}). However, at the State's option, USEPA continues to proces TSP SIP revisions which were in process at the time the new PM_{10} standard was promulgated. In the policy published on July 1, 1987 (p. 24679, column 2), USEPA stated that it would regard existing TSP SIP's as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM_{10}. Thus, USEPA is proposing this TSP SIP for approval.

DATE: Comments on this revision and on the proposed USEPA action must be received by October 3, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036

SUPPLEMENTARY INFORMATION: On February 13, 1985, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA a proposed temporary revision to the Illinois State Implementation Plan (SIP). The proposed SIP revision would grant LTV Steel Corporation (LTV) a variance from Rule 203(d)(5)(J) [recodified as 35 IAC 212.451]. The variance would expire on July 1, 1986, or 60 days after any final Illinois Pollution Control Board (IPCB) Order on a request for site-specific relief for LTV's 44-inch hot scarfing machine.[1] Rule 203(d)(5)(J) requires that all hot scarfing machines shall be controlled by pollution control equipment. Emissions from this equipment shall not exceed 0.03 grain per dry standard cubic foot (gr/dscf) during hot scarfing operations. LTV's Chicago Works is located in an area in Cook County which is classified as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for particulate matter.

History of the LTV Variance Request

LTV (formerly Republic Steel) submitted an Alternative Control Strategy Permit Application (ACS) to IEPA on February 8, 1982. The ACS would offset excess emissions from the basic oxygen furnace shop (Q–BOP) and hot scarfing machine with over control

[1] The IPCB did not approve such "site-specific relief" before the variance expired on July 1, 1986.

of blast furnace casthouse emissions.[2] On March 16, 1982, IEPA issued a "Notice of Incompleteness" contesting the sufficiency of information in the ACS application. IEPA and LTV have subsequently had numerous discussions on the feasibility of applying an ACS to the hot scarfer, but have not reached an agreement.

LTV filed a petition with the IPCB for a variance from Rule 203(d)(5)(J) on July 30, 1984. On January 10, 1985, the IPCB granted the variance until July 1, 1986, or until 60 days after any final Board Order on a request for site-specific regulatory relief for LTV's 44-inch hot scarfing machine, whichever is earlier.

On June 7, 1985, USEPA notified IEPA by letter that the variance could not be approved because it did not contain an emission limitation for the hot scarfer and because the variance would relax the SIP in a nonattainment area without a demonstration of attainment. IEPA responded on July 9, 1985, to request that USEPA remove the proposed SIP revision from further consideration until IEPA provided additional information.

On July 18, 1985, IEPA submitted to USEPA an amended petition filed by LTV and a June 27, 1985, IPCB Order in which the IPCB granted a 0.6 gr/dscf emission limitation for the hot scarfer. However, the State failed, at that time, to submit a modeled demonstration that approval of this variance will not cause the NAAQS to be exceeded.

On November 21, 1986, USEPA proposed disapproval of and solicited public comment on this variance. The basis of USEPA's proposed disapproval was the State's failure to provide the above described modeled attainment demonstration.

USEPA's policy precludes the approval of a relaxed emission limit in an area designated nonattainment, unless it can be demonstrated that the area in which a source is located and has impacts is actually attaining the NAAQS and that the SIP is adequate to attain and maintain the NAAQS, even with the relaxed emission limit. Otherwise, USEPA would have no assurance that the relaxation did not jeopardize the attainment and maintenance of the NAAQS in the source's impact area. This USEPA policy is contained in July 29, 1983, memorandum on Source Specific SIP Revisions from Sheldon Meyers, then Director of USEPA's Office of Air Quality Planning and Standards.

[2] The variance which is the subject of today's proposed rulemaking only concerns emissions from hot scarfing. It does not concern emissions from the Q-BOP

On September 26, 1985, Illinois submitted a modeling analysis as additional information for the variance request. This modeling indicates that the increased emissions which would be allowed by the variance would not have a significant impact (i.e., less than 5 micrograms per cubic meter, 24-hour average) on the particulate level around the plant. This modeling analysis addresses only emissions from the hot scarfer and does not provide an attainment demonstration in the nonattainment area. It, therefore, does not satisfy USEPA's requirement for a modeled demonstration of attainment in the impact area of the source, as specified in the Sheldon Meyers' policy memorandum. USEPA proposed a disapprove the incorporation of this variance for LTV into the Illinois SIP because the State failed to demonstrate that the SIP, as a whole despite the relaxation, would provide for the attainment and maintenance of the NAAQS in the area in which the hot scarfer is located and has an impact.

Public comments were invited on this proposed SIP revision and on USEPA's proposed disapproval. A public comment received from LTV's legal counsel caused USEPA to re-evaluate its proposed rulemaking action as discussed below.

Site Specific RACT Determination

USEPA's earlier analysis indicated that a site-specific rule change could be approved as a site-specific Reasonably Available Control Technology (RACT) determination if it were supported by a technical and economic demonstration that the revised limit was RACT for this source. This rule change would redefine RACT as it applies to the source. Such a RACT demonstration would include:

A. Data reflecting expected emissions in terms of the methodology specified in the applicable RACT-based rules.

B. A detailed technical explanation of why the source cannot meet the current RACT-based emission limit, including any control system specifications. This should include a discussion of controls that are in place on other similar emission sources.

C. A detailed estimate of the minimum costs required to improve (or replace) the existing control system(s) in order to meet the current RACT-based emission limits.

D. An analysis of the marginal cost-effectiveness (in $/ton of pollutant controlled) of improving or replacing the existing control system(s) to meet the current limits.

USEPA believed that the State failed to make this showing and, therefore, proposed rulemaking based on the other possible method of approving the plan, i.e., that the SIP with the relaxation would still assure the attainment and maintenance of the NAAQS.

In its public comments, counsel for LTV Steel Corporation asserted that the record submitted with the comments contains all the information necessary to support the site-specific RACT determination. This record included all of the information that LTV submitted to support a site-specific rule change for this source as well as IPCB orders and testimony on that action. In fact, the record does contain most of the information required to support a site-specific RACT determination, with two exceptions.

First, the IEPA supplemented the record by calculating the marginal cost-effectiveness of upgrading the scrubber and submitted these calculations as support for the site-specific rule change. The calculations indicate that the additional cost of meeting the current limit would be 289,060 dollars per year. The marginal cost would be 29,600 dollars per ton of additional particulate matter removed ($289,060/9.75 = $29,600).

This cost is based on:

1. The historical maximum operating rate of 33 scarfs per hour.

2. The cost of additional electricity required to increase the pressure drop across the venturi scrubber by 20 inches.

3. An equipment life of 20 years with a 10 percent salvage value after 20 years.

4. A 10 percent cost of money.

Second, USEPA received information from LTV that the hot scarfer and the scrubber were installed several years before the 0.03 gr/dscf limit was adopted by the State.

USEPA has revaluated the record, including this additional information, and agrees that it now supports the proposed limit, 0.06 gr/dscf, as a site-specific RACT limit for this source. For a nonattainment area, a modeled demonstration of attainment would also be required to secure USEPA approval of a SIP relaxation and continue overall approval status of the SIP. (July 29, 1983, memorandum from Sheldon Meyers, then Director of the Office of Air Quality Planning and Standards, to Directors of the Air Management Divisions). However, the Illinois SIP was approved on the basis of requiring RACT for all traditional sources of particulate matter and non-traditional fugitive dust studies. Since LTV has demonstrated that this SIP revision would be RACT, a modeled demonstration of attainment is not required.

Further, as stated above, the modeling analysis submitted by the State

indicates that the increased emissions which would be allowed by the variance would not have a significant effect (i.e., less than 5 micrograms per cubic meter, 24 hour average) on the particulate levels around the plant. For this reason, USEPA believes that progress toward attainment of the NAAQS would not be significantly affected.

Revised Proposed Rulemaking Action

For the above cited reasons, USEPA proposes to approve this requested SIP revision as a site specific RACT determination. Public comment is solicited on the requested SIP revision and on USEPA's proposed approval of it as a site specific RACT determination. Public comments received by the date indicated above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Authority: 42 U.S.C. 7401–7642.

Dated: June 30, 1987.

Editorial Note: This document was received at the Office of the Federal Register August 29, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88–19885 Filed 8–31–88; 8:45am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3439–8; KY–035]

Approval and Promulgation of Implementation Plans; Jefferson County, Kentucky; SOCMI Air Oxidation Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a regulation submitted by the Commonwealth of Kentucky pertaining to the Air Pollution Control District of Jefferson County (APCDJC). The regulation 6.38 "Standard of performance for existing air oxidation processes in synthetic organic chemical manufacturing industries", constitutes a revision to Kentucky's ozone State Implementation Plan (SIP) for Jefferson County, and relates to the Group III control techniques guideline (CTG) document for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes. The intent of the regulation is to apply reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from SOCMI air oxidation processes.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before October 3, 1988.

ADDRESSES: Written comments should be addressed to Jill Perry of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

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

Commonwealth of Kentucky, Division of Air Pollution Control, Natural Resources and Environmental Protection Cabinet, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Jill Perry, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864.

SUPPLEMENTARY INFORMATION: In accordance with the Kentucky Division of Air Pollution Control's commitment to adopt Group III CTG regulations, the Commonwealth of Kentucky submitted, on March 20, 1987, a revision to the Jefferson County ozone SIP to adopt Regulation 6.38. The regulation is consistent with Group III document, "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry".

Specifically, Regulation 6.38 requires the use of combustion to reduce the total organic compound emissions by 98 weight percent or to 20 ppm by volume, or maintenance of the total resource effectiveness index value (TRE) greater than 1.0. The TRE is calculated in accordance with Appendix H of the CTG. Final compliance with the regulation must be demonstrated no later than December 31, 1987.

Proposed action

This regulation is consistent with the requirements specified in the CTG document (EPA–450/3–84–015). Therefore, EPA is today proposing to approve Jefferson County, Kentucky's Group III regulation for SOCMI air oxidation processes.

The public is invited to participate in this rulemaking by submitting written comments on the proposed actions.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on substantial number of small entities. (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 25, 1987.

Charles H. Sutfin,

Acting Regional Administrator.

[FR Doc. 88–19888 Filed 8–31–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Dockets No. 78–72, Phase I, RM 6252; FCC 88–273]

MTS and WATS Market Structure, NECA Board of Directors

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice proposes to modify the Commission's rules to require that the Board of Directors of the National Exchange Carrier Association, Inc. (NECA) consists of three members representing subset I companies, three representing subset II companies, and nine representing subset III companies commencing January 1, 1989, to better reflect the interests of the NECA member companies in NECA's operations.

DATES: Comments are due on or before September 26, 1988, and reply comments are due on or before October 17, 1988.

FOR FURTHER INFORMATION CONTACT: Diane Cornell, Policy and Program Planning Division, Common Carrier Bureau, tel: (202) 632–9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in CC Docket No. 78–72, Phase I, RM 6252, FCC 88–273, adopted August 11, 1988, and released August 23, 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.

Summary of Notice of Proposed Rulemaking

1. In this *Notice of Proposed Rulemaking* (*NPRM*), we are proposing to amend § 69.602 of the Commission's rules governing the composition of the National Exchange Carrier Association, Inc. (NECA) Board of Directors to provide that, as of January 1, 1989, NECA's Board would have three members representing subset I companies, three representing subset II companies, and nine representing subset III companies. This *NPRM* is initiated in response to a Petition for Rule Change filed by NECA. In its petition, NECA asserted that a rule change prescribing a NECA Board structure of three subset I members, three subset II members, and nine subset III members effective January 1, 1989, properly balances the interests of the NECA subset companies given the advent of voluntary non-traffic sensitive (NTS) pooling as a result of this Commission's May 1987 *NTS Recovery Order*, 2 FCC Rcd 2953 (1987).

2. Our current rules provide that, for 1988, and thereafter, six directors shall represent subsets I and II jointly, and nine directors shall represent subset III. The proposed rule modification would not change the total number of directors provided for in our rules to represent subsets I and II, but would ensure that representatives of both subset I and subset II companies would serve on the Board. We consider that this proposed approach would more accurately reflect the interests of member companies in NECA's operations in the pooling structure that will be implemented in 1989, since the subset I and subset II groupings may have different interests in specific NECA functions. Accordingly, the *NPRM* tentatively concludes that the proposed rule changes should be adopted and invites interested persons to comment on this tentative conclusion.

3. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping labeling, disclosure, or record retention requirements that are applicable to the public, and will not increase or decrease burden hours on the public.

4. It is certified that the requirements contained in the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to the rules that may result from this proceeding.

Procedural Matters

5. Accodingly, it is ordered, pursuant to sections 1, 4(i)–(j), and 403 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act, that a notice or proposed rulemaking is instituted to amend Part 69 of this Commission's Rules.

6. It is further ordered, pursuant to the procedures set forth in § 1.415 of our Rules, that all interested persons may file comments on the proposal discussed in this Notice no later than September 26, 1988, and reply comments may be filed not later than October 17, 1988. In accordance with the provisions of § 1.419 of our Rules, an original and five copies of all statements, briefs, comments, or reply comments shall be filled with the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. All such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC offices.

7. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases that text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding.

8. In general, and *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates *See generally* 47 CFR 1.1202–1.1206 (1987).

Proposed Rule Changes

Part 69 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1006, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.602 is amended by revising paragraphs (c)–(f), effective January 1, 1989, to read as follows:

§ 69.602 Board of Directors.

* * * * *

(c) In 1989 and thereafter, three directors shall represent the first subset, three directors shall represent the second subset, and nine directors shall represent the third subset.

(d) Each subset shall select the directors who will represent it through an annual election in which each member of the subset shall be entitled to vote for the number of directors that will represent such members' subset.

(e) For each access element or group of access elements for which voluntary pooling is permitted, there shall be a committee composed only of directors from companies participating in the pooling for that element or group of access elements. Each such committee shall be reponsible for the preparation of charges for the associated access elements that comply with all applicable sections of this part.

(f) Directors shall serve for a term of one year commencing January 1.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–19687 Filed 8–31–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 170
Thursday, September 1, 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

Federal Grain Inspection Service

Designation Renewal of the Louisville (KY), Minot (ND), and Tri-State (OH) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: October 1, 1988.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Louisville's, Minot's, and Tri-State's designations terminate on September 30, 1988, and requested applications for official agency designation to provide official services within specified geographic areas in the March 31, 1988, **Federal Register** (53 FR 10411). Applications were to be postmarked by May 2, 1988. Louisville and Tri-State were the only applicants for designation and each applied for designation renewal in the entire area currently assigned to that agency. There were two applications for the Minot designation; Minot applied for designation renewal in the entire area currently assigned to that agency, except for Farmers Elevator Company, Bottineau, Bottineau County, and Farmers Union, Rugby, Pierce County, both in North Dakota. A neighboring official agency, Robert J. Bohlman dba Grand Forks Grain Inspection Department, in whose territory these grain elevator facilities are located applied only for those points.

The Service announced the applicant names in the June 1, 1988, **Federal Register** (53 FR 19975) and requested comments on the applicants' designation. Comments were to be postmarked by July 18, 1988; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Louisville, Minot, and Tri-State are able to provide official services in the geographic area for which the Service is renewing their designations. Effective October 1, 1988, and terminating September 30, 1991, Louisville and Tri-State will provide official inspection services in their specified geographic areas, previously described in the March 31 **Federal Register**. For that same time period, Minot will provide official inspection services in the specified geographic area previously described in the March 31 **Federal Register**, with the exception of Farmers Elevator Company, Bottineau, Bottineau County, and Farmers Union, Rugby, Pierce County, both in North Dakota. Grand Forks is able to provide official services to Farmers Elevator Company, Bottineau, Bottineau County, and Farmers Union, Rugby, Pierce County, both in North Dakota, for which the Service is selecting it for designation. Grand Forks will provide official inspection services to those two points effective October 1, 1988, and terminating March 31, 1990, when that agency's current designation terminates.

Interested persons may obtain official services by contacting the agencies at the following telephone number: Louisville at (502) 585–2358; Minot at (701) 838–1734; Tri-State at (513) 251–6571; and Grand Forks at (701) 722–0151.

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

Date: August 25, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–19700 Filed 8–31–88; 8:45 am]

BILLING CODE 34–10–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the States of Minnesota (MN) and Mississippi (MS)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Minnesota Department of Agriculture (Minnesota) and Mississippi Department of Agriculture and Commerce (Mississippi).

DATE: Comments to be postmarked on or before October 18, 1988.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows: TO: Lewis Lebakken, TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within the specified geographic areas in the June 31, 1988, **Federal Register** (53 FR 24753). Applications were to be postmarked by August 1, 1988. Mississippi was the only applicant for designation in its area and

applied for designation renewal in the entire area currently assigned to that agency.

There were four applications for the Minnesota designation. Minnesota applied for designation renewal for inspection and weighing functions in the entire area currently assigned to that agency. The other three applicants for designation were:

1. Aberdeen Grain Inspection, Inc., Aberdeen, South Dakota, applying for inspection functions only in Rock and Pipestone Counties, Minnesota;

2. North Dakota Grain Inspection Service, Inc., Fargo, North Dakota, applying for inspection functions only in the following area: East from North Dakota border on County Road 1 to Highway 89; south from Winger on Highway 59 to Elbow Lake; West from Highway 59 on County Road 55 to North Dakota border; and

3. David W. Puetz, West Lafayette, Indiana, proposing to do business as Licensed Inspection for Minnesota (LIM) applying for inspection functions only in the entire State of Minnesota or a portion thereof.

This notice provides interested persons the opportunity to present their comments concerning the applicants' designation. Commenters are encouraged to submit reasons for support or objection to these designation actions and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

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

Date: August 25, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88–19701 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Frankfort (IN), Jinks (IL), and Paris (IL) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the Frankfort Grain Inspection, Inc. (Frankfort), Robert H. Jinks, dba Jinks Grain Weighing Service (Jinks), and Robert R. Beals, dba Paris Illinois Grain Inspection (Paris).

DATE: Applications to be postmarked on or before October 3, 1988.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Frankfort, located at R.R. #2, Box 126, Frankfort, IN 46041; Jinks, located at R.R. 1, Box 81, Homer, IL 61849; and Paris, located at 1020 North Central Avenue, Paris, IL 61944; were each designated under the Act as an official agency on March 1, 1986. Frankfort was designated to provide official inspection and weighing functions, Jinks was designated to provide official weighing functions, and Paris was designated to provide official inspection functions.

Each official agency's designation terminates on February 28, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Frankfort, in the State of Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the north by the northern Fulton County line;

Bounded on the east by the eastern Fulton County line south to State Route 19; State Route 19 south Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32;

Bounded on the south by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and

Bounded on the west by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Exceptions to Frankfort's assigned geographic area are the following locations inside Frankfort's area which have been and will continue to be serviced by the following official agency:

Titus Grain Inspection, Inc.: The Andersons, Delphi, Carroll County; Buckeye Feed and Supply Company, Leiters Ford, Fulton County; and Cargill, Inc., Linden, Montgomery County.

The geographic area presently assigned to Jinks, in the States of Illinois and Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the Iroquois County line east to Illinois State Route 1; Illinois State Route 1 south to U.S. Route 24; U.S. Route 24 east into Indiana, to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; and southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermillion (in Illinois) and Iroquois County lines.

The following locations, all in Illinois, outisde of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, Dewitt County; Moultrie Grain Association, Lovington, Moultrie County; Monticello Grain Company, Monticello, Piatt County; and Pittwood Grain Company, Pittwood, Iroquois County (located inside Decatur Grain Inspection, Inc.'s area).

Exceptions to Jinks' assigned geographic area are the following locations inside Jinks' area which have been and will continue to be serviced by the following official agencies;

1. Paris Illinois Grain Inspection: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana; and

2. Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

The geographic area presently assigned to Paris, in the States of Illinois and Indiana, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 36 east across the Illinois-Indiana State line to the western Parke County line; the northern Parke and Putnam County lines;

Bounded on the East by the eastern Putnam, Owen, and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(15) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the western Edgar County line north to U.S. Route 36.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana (located inside Champaign-Danville Grain Inspection Departments, Inc.'s area for inspection services and Jinks Grain Weighing Service's area for weighing services, respectively).

Interested parties, including Frankfort, Jinks, and Paris, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning March 1, 1989, and ending February 28, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

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

Date: August 25, 1988.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 88-19702 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Tish Tang A Tang Analysis Area; Six Rivers National Forest, Humboldt County, CA; Intent To Prepare an Environmental Impact Statement

The Six Rivers National Forest will prepare an environmental impact statement to explore the environmental consequences of proposed projects within the Tish Tang A Tang analysis area. The analysis area is located in the North Trinity, Red Cap, Horse Trail and Crogan Compartments on the Lower Trinity Ranger District. These compartments are located along the east side of the Hoopa Valley Indian Reservation, 13 air miles northeast of Willow Creek, California in sections 1 and 12, T8N, R5E; sections 13, 14, 23, 24, 25, 26 and 36, T9N, R5E; sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 27, 28, 29, 30 and 32, T8N, R6E; and sections 7, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33, T9N, R6E; HBM, Humboldt County, California.

The EIS will evaluate the environmental effects of timber management on water quality, old growth management and old-growth related wildlife species. Native American contemporary use and spiritual values, and other affected resources. Of the 16,000 acres which are included within the analysis area, approximately 1,250 acres are being considered for timber management.

A range of alternatives, from multiple-use activities to deferring timber harvesting at this time will be considered. The alternatives will emphasize timber, wildlife, recreation and visual resource values and Native American contemporary use.

We invite other Federal agencies, Native American tribes, state and local agencies and interested individuals to participate in the project including the initial session, which is scheduled at the Trinity Valley School in Willow Creek, California, at 7:00 p.m. on September 29, 1988.

The draft EIS should be completed by January 30, 1988 and the Final EIS by early May 1989. If approved, development of sales would begin immediately thereafter.

Written comments and questions should be received by October 21, 1988 and directed to Larry Cabodi, District Ranger, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, California, 95573. The phone number is 916-629-2118.

James L. Davis, Jr.,

Forest Supervisor.

[FR Doc. 88-19897 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Dead Creek Bank Stabilization Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service,

U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dead Creek Bank Stabilization RC&D Measure, Iosco County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 2,600 ft. of bank slope excavation, 360 tons of rock riprap, 3 acres of seeding, .75 tons of fertilizer, 6 tons of mulch and one project sign. Total construction cost is $18,000; RC&D funds will pay 64% and local funds will pay 36%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until on or before October 3, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: August 24, 1988.

Jerry L. Keller,

Deputy State Conservationist.

[FR Doc. 88–19856 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–16–M

Mattawan Creek Erosion Control Critical Area Treatment Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mattawan Creek Erosion Control RC&D Measure, Van Buren County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 140 ft. of treated wood tie (retaining wall), 200 ft. of rock riprap, 0.2 acres of critical area planting and the removal of 140 ft. of concrete walls. Total construction cost $17,400; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until on or before October 3, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Jerry L. Keller,

Deputy State Conservationist.

Date: August 24, 1988.

[FR Doc. 88–19857 Filed 8–31–88; 8:45 am]

BILLING CODE 3410–16–M

Rifle River High Banks Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rifle River High Banks RC&D Measure, Ogemaw County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517–337–6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and

archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include the following items: 360 ft. of fencing, 150 ft. of stairs, 3 platforms, 250 ft. of guard rail, 350 yds. of riprap, 300 yds. of topsoil, 150 yds. of gravel, 2 surface inlets, 2 acres of seeding, 4 tons of mulch, 1 ton of fertilizer, 1,100 sq. ft. of erosion control netting, 12 shrubs and one project sign. Total construction cost is $30,000; RC&D funds will pay 65% and local funds will pay 35%.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner.

No administrative action on implementation of the proposal will be taken until on or before October 3, 1988.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Jerry L. Keller,

Deputy State Conservationist.

Date: August 24, 1988.

[FR Doc. 88-19858 Filed 8-31-88; 8:45 am]

BILLING CODE 3410-16-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting Rescheduling

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces that the previously announced Wednesday, September 21, 1988, meeting of the President's General Advisory Committee on Arms Control and Disarmament has been rescheduled to Wednesday, October 12, 1988. (See 52 FR 32266, August 24, 1988.)

The previously announced purpose, authority, and agenda items for this closed meeting are unchanged.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 88-19916 Filed 8-31-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of U.S. Travelers Visiting Canada; and Expenditures of U.S. Travelers in Mexico.

Form numbers: Agency—BE-536 and BE-575; OMB—0608-0001.

Type of request: Extension of a currently approved collection.

Burden: 35,000 respondents; 2,500 reporting hours.

Average Time Per Response: 5 minutes.

Needs and Uses: These surveys collect data on the average travel and passage fare expenditures of U.S. persons traveling to Canada, and on the average travel expenditures of U.S. persons traveling overland to Mexico. The data are used to develop international travel estimates in the U.S. balance of international payments and the U.S. national income and product accounts.

Affected public: Individuals or households.

Frequency: Daily.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffen, 395-7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20530.

Dated: August 26, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-19909 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-CW-M

New Members of the Departmental Performance Review Board

This notice announces the new members of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance of appointing authorities and their immediate deputies who are in the SES and SES members whose ratings are initially prepared by their respective appointing authorities.

These Departmental PRB members are appointed for a two year term ending November 30, 1990. The list of new members eligible to serve on the Departmental PRB is as follows:

General Counsel

Stephen J. Powell, Chief Counsel for Import Administration
Linda A. Townsend, Deputy General Counsel

Economic Affairs

Harry A. Scarr, Statistical Coordinator for Under Secretary

International Trade Administration

Genevieve M. Ryan, Deputy Assistant Secretary for U.S. and Foreign Commercial Service
John F. Mizroch, Deputy Assistant Secretary for Trade Adjustment Assistance
Timothy M. Bergan, Deputy Assistant Secretary for Import Administration
Timothy F. Ashby, Director, Office of Mexico and the Caribbean Basin

Bureau of Export Administration

Lee W. Mercer, Deputy Under Secretary for Export Administration
William Skidmore, Director, Office of Antiboycott Compliance

Travel and Tourism

Eric Peterson, Deputy Under Secretary for Travel and Tourism

Congressional and Intergovernmental Affairs

Mary Ann Knauss, Deputy Assistant Secretary for Intergovernmental Affairs
Kristin Paulson, Deputy Assistant Secretary for Congressional Affairs

Economic Development Administration

James L. Perry, Deputy Assistant Secretary for Grant Programs
Craig M. Smith, Deputy Assistant Secretary for Management Support

National Bureau of Standards

Burton H. Colvin, Director for Academic Affairs

George A. Sinnott, Associate Director for Technical Evaluation

Minority Business Development Agency

John Christian, Associate Director for Operations
Thomas Francis, Assistant Director for Program Support

National Oceanic and Atmospheric Administration

James W. Brennan, Assistant Administrator for National Marine Fisheries Service
B. Kent Burton, Director, Office of Legislative Affairs
Dennis F. Geer, Director, Office of Administration
Thomas Pyke, Assistant Administrator for Satellite and Information Services
Timothy R. Keeney, General Counsel

Persons desiring any further information about the Departmental PRB or its membership may contact Mr. Thomas J. Lambiase, Executive Secretary to the Departmental PRB, Office of Personnel and Civil Rights, Herbert C. Hoover Building, Room 5102, Washington, DC 20230, (202) 377–3453.

Dated August 23, 1988

Thomas J. Lambiase,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 88–19859 Filed 8–31–88; 8:45 am]

BILLING CODE 3510–BS–M

Bureau of Export Administration

[Docket Nos. 81–8104, 81–8015]

Actions Affecting Export Privileges; William T. Newkirk et al.

Summary

Pursuant to the July 28, 1988 Default Decision and Order of the Administrative Law Judge, which Decision and Order is affirmed by me, William T. Newkirk, individually and doing business as Kal Tek Labs, with an address at 250 Bonita Glen Drive, #3D, Chual Vista, California 92010, is denied all U.S. export provileges for a period of twenty (20) years from the date hereof.

Default Order

On July 28, 1988, the Administrative Law Judge entered his recommended Default Decision and Order in the above referenced matter. That Default 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.

This constitutes final agency action in this matter.

Date: August 26, 1988.

Paul Freedenberg,

Under Secretary for the Bureau of Export Administration.

Default Decision and Order

Appearance for Respondent: William T. Newkirk, 250 Bonita Glen Drive, #3D, Chula Vista, California 92010.

Appearance for Agency: Joan L. MacKenzie, Esq., Anthony K. Hicks, Esq., Attorney-Advisors, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

On February 26, 1988, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Agency), issued a charging letter to William T. Newkirk, individually and doing business as Kal Tek Labs (the Respondent). These charges were made pursuant to the authority of the Export Administration Act, as amended (50 U.S.C. App. 2401–2420 (1982 and Supp. III 1985))) (the Act), and the Export Administration Regulations (currently codified at 15 CFR Parts 368–389 (1987)) (The Regulations). The record reflects that the charging letter was served upon Respondent on March 10, 1988.

Since no answer has been filed, the Agency counsel moved that a default order be entered in these proceedings pursuant to § 388.8 of the Regulations. Section 388.8 of the Regulations provides:

Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

In accordance with this section, Agency counsel filed a Motion for Default Judgment on June 3, 1988. The Agency also submitted documentary evidence to support the allegations made in the charging letter. A copy of the above-mentioned Motion for Default Judgment was also sent to the Respondent on June 3, 1988. Thereafter, on June 13, 1988 an Order to Show Cause why a default order should not be entered was sent to the Respondent, to which no response has been made.

On April 5, 1984, the Respondent was charged in a Grand Jury Indictment, entered in the United States District Court for the Central District of California, with seventeen counts of conspiring with Man Chung Tong (Tong) to knowingly export electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export license from the Department of Commerce, and with knowingly submitting false statements to the Department. On or about August 21, 1984, the Respondent pled guilty to five of these counts (Counts One through Five of the Indictment) and was sentenced to two years' imprisonment and fined $50,000.

On February 26, 1988, the Agency issued a charging letter alleging the same violations that were charged in the Grand Jury Indictment, specifically that Respondent conspired and acted in concert with Tong to acquire U.S.-origin electronic equipment on false representations regarding the licensing of the commodities, and then to export the electronic goods to Hong Kong without obtaining from the Agency the validated export license that he knew was required by § 372.1(b) of the Regulations. The charging letter describes in paragraphs 1 through 6 the unlawful export of six specific sets of equipment exported in ten shipments, and the false statements that were made to the Agency for the purpose of obtaining licenses to export the equipment.

Findings and Discussion

The evidence shows that these alleged unlawful exports and false statements did indeed take place.

The Indictment and guilty plea describe the scheme the Respondent and Tong used to implement the conspiracy. Tong would place orders with the Respondent for U.S.-origin electronic equipment wanted by Tong's customers. The Respondent purchased the equipment from U.S. manufacturers, took delivery of it, and exported the equipment to Tong in Hong Kong, either directly from the United States, or indirectly through Mexico, knowing that he did not have the requisite export authorization from the Agency. The Respondent effected these exports by knowingly submitting false statements to the Agency on the export documents. After the equipment arrived in Hong Kong, Tong resold the electronic equipment to customers in the People's Republic of China and elsewhere. The Respondent has admitted these facts by

pleading guilty to Count One of the Indictment.

Paragraph 1 of the charging letter alleges that, on or about October 14, 1982, the Respondent exported a Hewlett Packard computer system from the United States through Mexico to Tong in Hong Kong without the validated export licesne that he knew or had reason to know was required by the Regulations. Respondent obtained the goods by representing that he had a customer in Mexico, and preparing a false invoice showing such a sale. Respondent has admitted these facts by pleading guilty to Count One of the Indictment (paragraphs 1, 2 and 4) and is therefore collaterally estopped from denying those facts. Those facts establish that the Respondent has violated § 387.4 and 387.6 of the Regulations in connection with this transaction, in the context of this administrative proceeding.

Paragraph 2 of the charging letter alleges that another unlawful export occurred on or about Januay 14, 1983. On or about November 17, 1982, Tong, doing business as Stillwell Development Company, Ltd., submitted Purchase Order No. ST00051 to the Respondent for the purchase of two spectrum analyzers with options. The Respondent submitted an export license application to the Agency on or about November 22, 1982, to export these spectrum analyzers to Stillwells, Ltd. in Hong Kong. On or about January 14, 1983, while the license application was still pending, the Respondent exported the two spectrum analyzers from the United States to Tong in Hong Kong, stating on the Shippers' Export Declaration that this shipment was authorized under "G–DEST". Because Respondent had applied for an individual validated license, he clearly knew that one was required. Subsequently, the license application was denied by the Agency on May 26, 1983. The documentary evidence fully supports the allegations in the charging letter. The Respondent pled guilty to the corresponding count in the Indictment (Counts Two and Three), and Respondent is therefore collaterally estopped from denying the facts in those counts. Those facts establish that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 3 of the charging letter alleges another violation that follows a similar pattern. On or about November 11, 1982, Tong, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SDS037 to the Respondent for electronic computer equipment. On or about November 16, 1982, Respondent submitted two export license applications (A659118 and A659955) to the Agency to export that electronic computer equipment to Scientific Data Systems, Ltd., in Hong Kong. While these license applications were still pending, on or about February 26, 1983, Respondent exported the electronic computer equipment from the United States to Tong in Hong Kong, again stating on the Shippers' Export Declaration that this shipment was authorized under "G–DEST". The license applications were denied by the Agency on May 19, 1983. Since the Respondent applied for a validated export license, he knew that one was required. The documentary evidence fully supports the allegations in the charging letter. The Respondent pled guilty to the corresponding count in the Indictment, and he is therefore collaterally estopped from denying the facts in those counts. Those facts establish that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 4 of the charging letter alleges that, on or about December 31, 1982, Tong, doing business as Equipment Rental Company, Ltd., submitted Purchase Order No. ER001 to the Respondent for electronic equipment including oscilloscopes and spectrum analyzers. On or about January 3, 1983, Respondent submitted two export license applications (A669213 and A669214) to the Agency seeking authorization to export this equipment to Equipment Rental Company, Ltd., in Hong Kong. While these license applications were still pending, the Respondent exported the equipment in two shipments from the United States to Tong in Hong Kong on or about April 9, 1983 and on or about June 4, 1983. He effected these exports by stating on the Shippers' Export Declaration accompanying each shipment that these shipments were authorized by validated export license A663561, an export license application unrelated to these exports. The license applications for this equipment were denied by the Agency on July 29, 1983. The documentary evidence clearly supports the charges that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 5 of the charging letter alleges another similar violation. On or about February 4, 1983, Tong, doing business as Scientific Data Systems, Ltd., submitted Purchase Order No. SDS063 to the Respondent for electronic equipment, including cathode ray oscilloscopes. On or about January 3, 1983, the Respondent submitted an export license application (A677421) to the Agency seeking authorization to export that electronic equipment to Scientific Data Systems, Ltd., in Hong Kong. This license application was denied by the Agency on May 19, 1983. Both while the license application was still pending, and after it was denied by the Agency, however, the Respondent exported the equipment in four shipments on or about May 7, May 28, June 25 and July 3, 1983, from the United States to Tong in Hong Kong, stating on the Shippers' Export Declaration accompanying each shipment that validated export license A663561 authorized these shipments. In applying for a validated exported license and exporting without it, he acted with knowledge that he was violating the Regulations. The documentary evidence clearly supports the charges that the Respondent violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Paragraph 6 of the charging letter alleges that the Respondent submitted to the Agency a validated export license application (A648884) on or about October 7, 1982, to ship 20 cathode ray oscilloscopes to a customer in Mexico. On or about June 22, 1983, the Respondent exported from the United States through Mexico to Tong in Hong Kong two oscilloscopes and two plug-in units on the false representation that export license A648884 authorized the export. License application A648884 related to a different export to Mexico. The Respondent has admitted these facts by pleading guilty to Count One of the Indictment (paragraph 3), and is therefore collaterally estopped from denying those facts. Those facts establish that the Respondent has violated § 387.4, 387.5 and 387.6 of the Regulations in connection with this transaction.

Conclusion

The exhibits and representations by Agency counsel and the Respondent's guilty plea fully support the charges made by the Agency in the February 26, 1988 charging letter, which alleged that the Respondent knowingly exported electronic testing and calibration equipment from the United States to the Republic of Hong Kong without first obtaining the required validated export license from the United States Department of Commerce (§ 372.1(b) of the Regulations), and knowingly submitted false statements to the Agency. By doing so the Respondent violated §§ 387.4, 387.5 and 387.6 of the Regulations with respect to the

aforementioned shipments. (15 CFR 387.4, 387.5 and 387.6)

The pattern of conduct demonstrated by the violations shows a deliberate and willful intent to violate United States export laws and regulations. The goods unlawfully exported to Hong Kong by the Respondent were controlled for national security purposes. I find that an Order denying export privileges for 20 years from the date that a final order is entered in this proceeding is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act, and the Regulations.

Order

I. For a period of 20 years from the date of the final Agency action, Respondent 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(s) appears or participates, 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)'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 any 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. 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)).

Hugh J. Dolan,

Administrative Law Judge.

Date: July 28, 1988.

[FR Doc. 88-19906 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 20, 1988, 9:00 a.m., Herbert C. Hoover Building, Room B-841, 14th & Constitution Avenue NW., Washington, DC.

The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.

2. Presentation of Papers or Comments by the Public.

3. Discussion of 1988 Report and 1989 Work Plan.

4. Comments on ICOTT Proposal on CCL 1565.

5. Report by the Supercomputer Task Force.

6. Discussion of CSTAC Role Within the Requirements of Omnibus Trade & Comparative Act.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or protions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377-2583.

Date: August 26, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff Office of Technology & Policy Analysis.

[FR Doc. 88-19926 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures & Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held Sept. 21, 1988, 1:00 p.m., Room B-841, Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. The subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation on 1988 Annual Report and 1989 Work Plan.
4. Presentation on Export Documentation and Filing Requirements Proposal.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, contact Betty Anne Ferrell at 202/377-2583.

Date: August 26, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-19929 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held September 20, 1988, 3:00 p.m. in Room B-841 of the Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC.

The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Presentation of 1988 Annual Report and 1989 Annual Plan.
4. Response on the Ruggedized Parameters.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the subcommittee. For further information or copies of the minutes, call Betty Ferrell at (202) 377-2583.

Date: August 26, 1988

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-19927 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held September 21, 1988, at 9:00 a.m., Herbert C. Hoover Building, Room B-841, 14th Street & Constitution Avenue NW., Washington, DC. The Software Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Briefing by Office of General Counsel on New Draft Proposed Technical Data Regulations.
4. Discussion on Data Enscription Standard.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty A. Ferrell at (202) 377-2583.

Date: August 26, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 88-19928 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Antidumping or Countervailing Duty Order, Funding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than September 30, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceeding	
Canada: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A-122-057)	9/01/87-8/31/88
Canada: Carbon Steel Bars and Structural Shapes (A-122-005)	9/01/87-8/31/88
Canada: Steel Jacks (A-122-006)	9/01/87-8/31/88
Federal Republic of Germany: Certain Forged Steel Crankshafts (A-428-604)	5/13/87-8/31/88
Italy: Pads for Woodwind Instrument Keys (A-475-017)	9/01/85-8/31/86

	Period
Japan: Amorphous Silica Filament Fabric (A-588-607)	5/13/87-8/31/88
Japan: Metal-Walled Above-Ground Swimming Pools (A-588-058)	9/01/87-8/31/88
People's Republic of China: Greige Polyester/Cotton Printcloth (A-570-101)	9/01/87-8/31/88
United Kingdom: Certain Forged Steel Crankshafts (A-412-612)	5/13/87-8/31/88
Countervailing Duty Proceeding	
Israel: Fresh Cut Roses (C-08-064)	10/01/86-9/30/87
Mexico: Portland Hydraulic Cement and Cement Clinker (C-201-013)	1/01/87-12/31/87
Mexico: Lime (C-201-402)	1/01/87-12/31/87
New Zealand: Lamb Meat (C-614-503)	4/01/87-3/31/88
New Zealand: Steel Wire (C-614-601)	7/01/87-6/30/88
Peru: Cotton Shop Towels (C-333-401)	1/01/87-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **FEDERAL REGISTER** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by September 30, 1988.

If the Department does not receive by September 30, 1988 a request for reivew of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Compliance.

Date August 25, 1988.

[FR Doc. 88-19925 Filed 8-31-88; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

August 29, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 6, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for Group II and the fabric group, as well as certain specific limits, are being adjusted, variously, for swing and carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49186, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 29, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, wood, man-made fiber, silk blend and other vegetable figer textiles and textile products, produced or manufactured in Malaysia and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on Sept. 6, 1988, the directive of December 24, 1987 is hereby amended to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the governments of the United States and Malaysia:

Category	Adjusted 12-month limit [1]
Fabric Group	
218, 219, 220, 225-227, 313-315, 317, 326, 613/614/615/617, as a group.	74,113,984 square yards equivalent.
Group II	
201, 222-224, 229, 239, 330, 332, 349, 350, 352-354, 359-362, 369-O [2], 400-434, 436, 438-O [3], 440, 443, 444, 447, 448, 459, 464-469, 600-603, 606, 607, 611, 618-622, 624-630, 632, 633, 643, 644, 649, 650, 652-654, 659, 665,-670, 831-834, 836, 838, 840 and 843-859, as a group.	31,432,277 square yards equivalent.
Other Specific Limits	
300/301	3,989,195 pounds.
331/631, 333/334/335/835.	1,282,500 dozen pairs, 147,075 dozen of which not more than 73,538 dozen shall be in Category 333, 71,331 dozen shall be in Category 334, 73,538 dozen shall be in Category 335, 73,538 dozen shall be in Category 835.
336/636	271,952 dozen.
337/637	247,641 dozen.
338/339	642,074 dozen.
340/640	789,964 dozen.
341/641	1,068,738 dozen of which not more than 381,274 dozen shall be in Category 341.
342/642/842	242,149 dozen.
345	95,888 dozen.
347/348	261,181 dozen.
351/651	158,841 dozen.
363	3,338,680 numbers.
369-S [4]	635,271 pounds.
435	14,640 dozen.
442	19,577 dozen.
445/446	31,074 dozen.

Category	Adjusted 12-month limit [1]
604	1,770,672 pounds.
634/635	498,811 dozen of which not more than 217,671 dozen shall be in Category 635.
638/639	277,955 dozen.
645/646	224,745 dozen.
647/648	1,036,457 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.
[2] In Category 369–0, all TSUSA numbers except 366.2840.
[3] In Category 438–0, only TSUSA numbers 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640.
[4] In Category 369–S, only TSUS number 366.2840.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

James H. Babb,

Chairman, Committee for the Implemention of Textile Agreements.

[FR Doc. 88–19908 Filed 8–31–88; 4:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Realignment and Closure Commission; Meetings

ACTION: Notice of business meeting and public hearing.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a business meeting at 9:00 a.m., September 14, 1988 in the Dirksen Senate Office Building, Room 628. This will immediately be followed by a hearing to take testimony on lessons learned from former Defense Department executives regarding previous base realignments and closures.

For further information, please contact: Russel Milnes, (202) 653–0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 26, 1988.

[FR Doc. 88–19893 Filed 8–31–88; 8:45 am]

BILLING CODE 3810-01-M

Base Realignment and Closure Commission; Closed Meeting

ACTION: Closed meeting.

SUMMARY: The Defense Secretary's Commission on Base Realignment and Closure will hold a closed meeting at 2:00 p.m., September 14, 1988 to receive a classified Defense Department briefing. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

FOR FURTHER INFORMATION, PLEASE CONTACT: Russel Milnes, (202) 653–0180, address: Defense Secretary's Commission on Base Realignment and Closure, 1825 K Street, NW., Suite 310, Washington, DC 20006.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 29, 1988.

[FR Doc. 88–19934 Filed 8–31–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Meeting and Extension of Public Comment Period

AGENCY: Department of the Army, DOD.

ACTION: Notice of public meeting and extension of the public comment period on the draft environmental impact statement for the Biological Defense Research Program.

SUMMARY: In the April 8, 1987 Notice of Intent, the Department of the Army stated that, as executive agent for the Department of Defense, it is responsible for the ongoing conduct of research and product development in the biological defense field. The Biological Defense Research Program involves research and product development in equipment, devices, drugs, substances, and biologics that are used to detect biological substances, protect soldiers from the adverse effects of biological substances, treat exposed individuals, and decontaminate exposed individuals, areas and equipment. The work is being carried out at a number of Government and university laboratories throughout the country.

The proposed action for EIS evaluation purposes is the continuation of the ongoing program in its current form. Alternatives considered to the proposed action for consideration in the EIS are:

(1) Modification in program scope and

(2) Modification in program implementation.

A public meeting was held on July 25, 1988 at the Rosslyn West Park Hotel, 1900 North Fort Myer Drive, Arlington, Virginia, to elicit comments and suggestions on the draft EIS. The time period for the public comment period was originally scheduled to close on August 12, 1988. Several individuals and organizations have requested a public meeting be held in the State of Utah and an extension of the public comment period.

To ensure full public involvement, a public meeting has been scheduled on September 19, 1988 at Tooele Army Depot, Tooele, Utah 84074, and public comment period has been extended to October 4, 1988, to elicit comments and suggestions on the draft EIS. The public meeting will begin at 7:00 p.m. MDT and will be held in the Post Theater (Bldg 1005). Individuals wishing to present oral comments at the meeting may register in advance by calling (301) 663–2732 up through September 16, 1988, during normal business hours of 8:00 a.m. EDT to 4:00 p.m. EDT. Collect calls will be accepted. On-site registration at the meeting may also be available depending upon the availability of time and number of individuals registered in advance. All commenters are asked to bring a written copy of their remarks for submission to the meeting record. Persons or organizations unable to attend the public meeting may submit written comments for inclusion in the public meeting record to the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD–PA (Mr. Charles Dasey), Fort Detrick, MD 21701–5012. The time period for providing written comments for inclusion in the meeting record will end October 4, 1988.

The draft EIS for the Biological Defense Research Program is still available for public review and comment. A copy of the document may be obtained by contacting Mr. Charles Dasey at the following address: Commander, U.S. Army Medical Research and Development Command, Attn: SGRD–PA (Mr. Charles Dasey), Fort Detrick, MD 21701–5012. Written comments should be submitted to the same address. The time period for providing written comments for consideration in preparing the final EIS is extended to October 4, 1988.

Lewis D. Walker,

Deputy for Environment, Safety, and Occupational Health, OASA (I&L).

[FR Doc. 88–19907 Filed 8–31–88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice Inviting Preapplications and Applications for New Awards Under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1989-Correction.

On August 12, 1988, the Secretary of Education published in the **Federal Register** (53 FR 30462–63) a notice inviting preapplications and applications under the Comprehensive Program of the Fund for the Improvement of Postescondary Education (FIPSE) for Fiscal Year 1989. This document corrects a typographical error in the heading that was made in the notice. The correction is as follows:

1. In the last line of the heading "Fiscal Year 1988" is corected to read "Fiscal Year 1989."

FOR FURTHER INFORMATION CONTACT: Constance Ewing Cook, Program Officer, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3100, ROB–3, Washington, DC 20202. Telephone: (202) 732–5750 or 732–5766.

Dated: August 23, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–19944 Filed 8–31–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Cooperative Agreement; Financial Assistance Award to Massachusetts Institute of Technology

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36-month Cooperative Agreement to Massachusetts Institute of Technology (MIT), Energy Laboratory, 77 Massachusetts Avenue, Cambridge, MA 02139, in the amount of $234,617. The pending award is based on an unsolicited application for a cooperative research project to develop practical, simplified scaling laws of bed dynamics and heat transfer for use in the bubbling and circulating Fluidized-Bed Combustors (FBCs). With the federal financial assistance from DOE, MIT will determine experimentally the validity and the limits of the scaling simplification. The simplified scaling laws allow simulation of bed dynamics and heat transfer in FBCs relatively easily and without significant loss of accuracy. Results from this cooperative research will eventually help design and operation of large size FBCs.

FOR FURTHER INFORMATION CONTACT: Laura E. Brandt, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Viriginia 26507–0880, Telephone: (304) 291–4079, Procurement Request No. 21–88MC25049.000.

Louie L. Calaway,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

Date: August 22, 1988.

[FR Doc. 88–19939 Filed 8–31–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–34–NG]

Encor Energy (America) Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Encor Energy (America) Inc. (Encor) blanket authorization to import Canadian natural gas for sale in the domestic spot market. The order issued in ERA Docket No. 88–34–NG authorizes Encor to import up to 29.2 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 26, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–19940 Filed 8–31–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–569–000 et al.]

Pacific Gas and Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 26, 1988.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Co.,

[Docket No. ER88–569–000]

Take notice that on August 19, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing the following four documents:

"Settlement of Disputes Between Pacific Gas And Electric Company and Sacramento Municipal Utility District" (Dispute Settlement)

"Amendment to the Power Sale, Exchange and Integration Contract Between Pacific Gas And Electric Company and Sacramento Municipal Utility District" (1988 Amendment)

"Power Sale Agreement Between Pacific Gas And Electric Company and Sacramento Municipal Utility District" (Power Sale Agreement)

A letter agreement, dated August 12, 1988, amending the above three agreements (letter agreement).

(1) *The Dispute Settlement* resolves certain disputes relating to the June 4, 1970 Power Sale, Exchange and Integration Contract, (FERC Rate Schedule 45) as amended from time to time, including the amendment embodied in the August 29, 1985 Settlement Agreement (collectively, Integration Contract). Specifically, the parties settle and resolve all disputes and claims related to outages or curtailment of the Rancho Seco Nuclear Generating Station (Rancho Seco).

(2) *The 1988 Amendment* amends the Integration Contract as to the treatment of Rancho Seco operation, sales and purchases of capacity and energy between PG&E and Sacramento Municipal Utility District (SMUD) and treatment of exchange accounts.

(3) *The Power Sale Agreement* provides for sale of capacity and energy to SMUD from January 1, 1990 through December 31, 1999.

(4) *The letter agreement* amends each of the above three agreements in order to clarify and make explicit the intents of the parties with regard to terminating Docket No. EL86–27–002.

Copies of this filing were served upon SMUD and the California Public Utilities Commission.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Indiana, Inc.

[Docket No. ER88–573–000]

Take notice that on August 22, 1988, Public Service Company of Indiana, Inc. (PSI) tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 (8th Revision); FERC Electric Tariff, Original Volume No. 2 (6th Revision) and Electric Rate Schedules FERC Nos. 234 and 236. Such changes in rates are the result of an uncontested rate decrease negotiated between PSI and the following parties:

1. Cities and Towns (meaning the municipal utilities who are direct customers of PSI).
2. City of Logansport, Indiana.
3. Henry and Jackson County Rural Electric Membership Corporations.
4. Indiana Municipal Power Agency.

The proposed changes would provide a two-step annual decrease in revenues of $5.9 million based upon the twelve-month period ending March 1984.

As part of the negotiations between the parties, PSI has requested the following:

1. Waiver of the notice requirements under Section 35.3 of the Commission's Regulations under the Federal Power Act and an effective date of September 1, 1988, without suspension, for the first step of the rate decrease.
2. Waiver of the notice requirements under Section 35.3 of the Commission's Regulations under the Federal Power Act and an effective date of September 1, 1990, without suspension, for the second step of the rate decrease.
3. Waiver of the requirements under Section 35.13 of the Commission's Regulations under the Federal Power Act not specifically addressed or complied with in the filing.

Copies of the filing were served upon the Indiana Utility Regulatory Commission, the City of Logansport, Indiana, Henry and Jackson County Rural Electric Membership Corporation, the Indiana Municipal Power Agency, and the Indiana municipalities of Advance, Bainbridge, Brooklyn, Coatesville, Dublin, Dunreith, Edinburg, Hagerstown, Knightstown, Ladoga, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorntown, Veedersburg, Waynetown and Williamsport.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company

[Docket No. ER88–574–000]

Take notice that on August 22, 1988, Northern States Power Company—Minnesota, on behalf of Northern States Power Company—Minnesota and Northern States Power Company—Wisconsin and Northwestern Wisconsin Electric Company tendered for filing the Power Sale Agreement among Northern States Power Company—Minnesota and Northern States Power Company—Wisconsin and Northwestern Wisconsin Electric Company (Power Sale Agreement).

The Power Sale Agreement is an initial rate schedule filing. The power Sale Agreement provides for electric power and energy transactions among Northern States Power Company—Minnesota and Northern States power Company—Wisconsin and Northwestern Wisconsin Electric Company. The power Sale Agreement initially sets forth three energy transactions schedules, and the terms and conditions under which these transactions may take place.

Northern States power Company—Minnesota and Northern States power Company—Wisconsin and Northwestern Wisconsin Electric Company request this power Sale Agreement become effective on August 1, 1988, and therefore, requests waiver of the Commission's notice requirements.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota and Wisconsin.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Louisiana Power & Light Company

[Docket No. ER88–398–001 and FA86–063–002]

Take notice that on August 22, 1988, Louisiana Power & Light Company tendered for filing, pursuant to Commission Order dated July 15, 1988, a compliance report showing the particulars of the refunds ordered.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Arkansas Power and Light Company

[Docket No. ER88–546–000]

Take notice that on August 23, 1988, Arkansas Power & Light Company (Company) tendered for filing a notice of withdrawal of its filing made August 1, 1988 in Docket No. ER88–546–000.

The Company requests that Rate Schedule M33A filed August 1, 1987 in Docket No. ER87–568–000 remain in effect until a Grand Gulf Settlement Agreement (Settlement) incorporating revisions to the recovery provisions of the Settlement and the directive set out by the Financial Accounting Standards Board in its Statement of Accounting Standards No. 92 has been approved by the Arkansas Public Service Commission, at which time the Company will file a revised Rate Schedule M33A for North Arkansas Electric Cooperative reflecting the revisions to that Settlement Agreement.

Copies of this filing have been sent to the wholesale customer affected by the filing and the Arkansas Public Service Commission.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Public Service Company

[Docket No. ER88–552–000]

Take notice that on August 8, 1988, Iowa Public Service Company IPS) tendered for filing an executed Firm Capacity Sales Agreement dated July 7, 1988, whereby IPS will supply Interstate Power Company (IPW) with firm electric capacity and associated energy, commencing May 1, 1988 and ending on October 31, 1988. IPS requests that the negotiated Agreement be made effective as of May 1, 1988.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power & Light Company

[Docket No. ER88–313–000]

Take notice that on August 22, 1988, Arkansas Power & Light Company (AP&L) tendered for filing an amendment to its March 31, 1988 filing, as amended June 15, 1988, in response to a deficiency letter from the Director of the Division of Electric Power Application Review. The filing concerns the allocation of refunds to AP&L's wholesale customers and co-owners of the White Bluff and Independence Coal Plants of amounts received by AP&L from Burlington Northern Railroad Company. AP&L proposes to make refunds, with interest, in accordance with the Refund Payment Schedule (as amended) 30 days after Commission authorization.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER88-575-000]

Take notice that on August 22, 1988, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 1 to Municipal Participation Agreement, between KCPL and the City of Marshall, Missouri dated August 1, 1988. KCPL states that the Amendatory Agreement provides for an extension of the contract term and a modified rate design for firm power service.

KCPL requests an effective date of the date of filing, and therefore requests waiver of the Commission's notice requirements.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Power Company

[Docket No. ER88-576-000]

Take notice that on August 23, 1988, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Ohio Power Company (OPCO) a Transmission Agreement, dated as of July 1, 1988, between American Municipal Power-Ohio, Inc. (AMPC) and OPCO.

The Transmission Agreement provides a service whereby AMPO may transmit power and energy from its Richard H. Gorsuch Station to Patrons of its via OPCO's transmission facilities. This Service affords AMPO Patrons an alternate source of power for the next twenty years. Copies of this filing have been sent to the Public Utility Commission of Ohio.

AEP requests an effective date of September 1, 1988.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accor dance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19930 Filed 8-31-88; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-689-000 et al.]

Southern Natural Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

Docket No. CP88-689-000]

August 25, 1988.

Take notice that on August 17, 1988, Southern Natural Gas Company Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, pursuant to its blanket certificate of public convenience and necessity issued in Docket No. CP82-406-000, filed in Docket No. CP88-689-000 a request pursuant to section 157.205 of the Relgulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate an additional point of delivery for an existing customer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it provides natural gas service to the Alabaster Water and Gas Board (Alabaster), at points of delivery (Alabaster Nos. 1 and 2) in Shelby County, Alabama, as specified in the Service Agreement between Southern and Alabaster dated September 16, 1969. Southern proposes to install and operate an additional point of delivery (Alabaster No. 3) in Shelby County, Alabama. Southern states that Alabaster has informed Southern that the additional point of delivery will be used to provide natural gas service to an industrial customer of Alabaster at its plant in Shelby County, Alabama.

In order to implement the new point of delivery, Southern states that it plans to construct, install, and operate a new meter station and appurtenant facilities. The total estimated cost of the proposed construction and installation of these facilities is $80,000. Alabaster has agreed to reimburse Southern for the total actual cost of the proposed construction and installation.

Southern states that the total volumes to be delviered to Alabaster after the proposed installation will not exceed the total volumes authroized prior to the implementation of the point of delivery so that the activities are not prohibited by any existing tariff of Southern. Southern proposes to provide Alabaster No. 3 with a contract delivery pressure of 60 psig.

Southern also states that it has sufficient capacity to accomplish the deliveries proposed by the installation and operation of the new point of delivery without detriment to Southern's other customers, and that the construction and operation of the facilities will not result in any termination of service and will have a de minimis impact on Southern's peak day and annual deliveries.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP88-680-000]

August 25, 1988.

Take notice that on August 15, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-680-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove wellhead measurement facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the facilities proposed to be abandoned were originally required and installed for the measurement and connection of natural gas purchased by Northern from producers at the wellhead at locations in the States of Kansas, Oklahoma and Montana. Northern further states that such wells have been plugged and abandoned, as documented by reports filed with the respective State Public Utilities Commission. Northern asserts that the facilities proposed to be abandoned are no longer required and their abandonment would not result in the termination of service or detriment to any of Northern's customers. Northern further asserts that it has operational requirements to use these proposed abandoned facilities elsewhere on its system to avoid the purchase of new facilities to perform the required function. Northern indicates that the removal cost of wellhead metering facilities would average approximately $100.00 each.

Northern states that although the producer has ceased the production and sale of gas to Northern at each of the various wells, the producer has not received, or in most cases even requested, Commission authorization

permitting the abandonment of its sale to Northern. Without evidence of Commission approved abandonment, on behalf of the producer, Northern claims it is unable to utilize its blanket certificate (Docket No. CP82–401–000) and § 157.216 of the Commission's Regulations to abandon and remove the facilities. Northern states it has attempted, without success, to persuade the producers to secure the necessary abandonment authority. However, Northern indicates it is aware of a report required to be filed by a producer with a state utility commission before a well can be plugged and abandoned by the producer. This report provides documented proof that such wells have been plugged and abandoned and are physically incapable of any future gas production. It is further indicated that these reports describe the procedure used in plugging the wells, along with pertinent information concerning the owner/operator, their addresses and location of the wells. Northern submits that the Commission can accept the respective States' plugging and abandoning reports as an appropriate basis for Northern to abandon the idled wellhead facilities serving the wells.

Comment date: September 15, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP88–708–000]

August 25, 1988.

Take notice that on August 22, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP88–708–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of major new pipeline and compression facilities which, in conjunction with certain existing facilities, would permit Natural to establish an interconnect between its Amarillo and Gulf Coast mainlines, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to construct and operate:

- 97 miles of 30-inch pipeline to be located in Carter, Murray, Johnston and Bryan Counties, Oklahoma.
- 94 miles of 30-inch pipeline to be located in Lamar, Red River, Franklin, Titus, Morris and Cass Counties, Texas.
- 8700 horsepower of compression at a new compressor station to be located in Carter County, Oklahoma at the interconnection of the western end of the proposed 97-mile segment and Natural's existing Oklahoma Extension.

It is indicated that the proposed facilities, together with 39 miles of existing 30-inch pipeline already owned and operated by Natural pursuant to general section 7(c) certification in Bryan County Oklahoma and Fannin and Lamr Counties, Texas with which they would be connected, would be known as the "NGPL Interconnect". Natural states that the project would result in the interconnection for the first time of Natural's two main transmission systems, the Amarillo Line and the Gulf Coast Line.

Natural states that its Amarillo and Gulf Coast mainlines do not interconnect in the producing regions of Texas and Oklahoma, and that over the years it has experienced periods of gas supply imbalance between the two lines which have restricted the supply available to meet market requirements. Natural notes that while past efforts to connect the mainlines have never materialized, there is now a greater need for the systems to be connected than at any time in the past.

Natural states that the proposed NGPL Interconnect is needed primarily to alleviate the substantial unmet demand for transportation service out of the Oklahoma Triangle area of Natural's Amarillo system and also to provide needed system-wide operational flexibility. Natural asserts that its experience as an open access transporter under the Order 436/500 program has demonstrated that there is substantial unsatisfied demand for transportation out of the Oklahoma Triange area and that the proposed NGPL Interconnect would provide the necessary additional pipeline capacity in an efficient manner. Natural states that the proposed project would also be important to the management of its system supply as well as the general operation of its two large field storage facilities, the Sayre Field in Oklahoma and the North Lansing Field in Texas.

Natural states that while it requires the proposed facilities primarily for movement of gas to the Gulf Coast Line, it has designed the project to allow for reverse flow in certain circumstances.

Natural states that the capacity of the proposed pipeline facilities, including compression, would be approximately 350,000 Mcf per day. It is estimated that the cost of the project would be $107,713,000, which would be financed from corporate funds on hand. Natural proposes to charge incremental rates for transportation service across the segments of the NGPL Interconnect based on a cost of service using a Modified Fixed Variable cost allocation, designed on a 90 percent load factor basis and using a three-year average rate base. Natural further proposes to establish maximum and minimum rates for each of the two new pipeline segments. Natural notes that it does not seek a determination in this proceeding as to whether the cost of the proposed facilities (and the existing 39-mile segment) should be included in its rate base. Natural asserts that while it would be inclined to eventually seek rate base treatment, this issue can be resolved at a later time.

Comment date: September 15, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP88–695–000]

August 26, 1988.

Take notice that on August 18, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP88–695–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, install, and operate certain pipeline facilities under its blanket certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it has the right to purchase natural gas reserves produced in the Carthage, Joaquin, Logansport, and Spider Fields in De Soto Parish, Louisiana and Panola and Shelby Counties, Texas. Southern further states that based on the daily deliverability dedicated to Southern in these fields, Southern needs additional pipeline capacity to deliver supplies to points downstream of the fields on its pipeline system. Accordingly, Southern proposes to construct, install, and operate approximately 45 miles of 16-inch loop pipeline to extend from its Logansport Compressor Station in De Soto Parish, Louisiana, to a point of interconnection near Mile Post 80 on Southern's 14-inch Logansport Line in Bienville Parish, Louisiana. Southern states that the estimated cost of the proposed facilities would be $10,664,700; which Southern expects to finance initially from short-term loans and/or cash on hand, and ultimately from permanent financing.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP88-691-000]

August 26, 1988.

Take notice that on August 17, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-691-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place and by sale approximately 0.8 miles of 2-inch lateral pipeline in Anderson County, Kansas, and the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the pipeline is no longer in use and proposes to abandon in place 0.5 miles and to abandon by sale 0.3 miles of 2-inch lateral pipeline. WNG further states that the reclaim cost is estimated to be $270, the salvage value $0 and the sales price $1.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP88-694-000]

August 26, 1988.

Take notice that on August 18, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-694-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Hadson Gas Systems, Inc. (Hadson), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport, on an interruptible basis, up to 75,000 MMBtu of natural gas on a peak day, plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS, and 18,250,000 MMBtu on an annual basis for Hadson. It is stated that Natural would receive the gas for Hadson's account at various existing receipt points in Oklahoma, Texas, Illinois, Louisiana, offshore Louisiana, New Mexico and Wyoming. Natural then proposes to deliver equivalent volumes of gas in Louisiana, New Mexico, Illinois and Iowa. It is asserted that the transportation service would be effected using existing facilities and would not require the construction of additional facilities. It is explained that the service commenced June 16, 1988, under the automatic authorization provisions of § 284.223 of the Commission's Regulations.

Comment date: October 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Jubilee Pipeline Company

[Docket No. CP88-646-000]

August 26, 1988.

Take notice that on August 12, 1988,[1] Jubilee Pipeline Company (Jubilee) filed in Docket No. CP88-646-000, pursuant to § 157.14, 157.201, and 284.221 of the Commission's Regulations under the Natural Gas Act and the Natural Gas Policy Act, its application requesting (1) authorization to construct and operate a total of approximately 81.6 miles of various diameter pipeline, ranging in size from 8 inches to 24 inches in diameter, together with metering and appurtenant facilities and 6,000 horsepower (HP) of compression, extending from a point onshore in Mobile County, Alabama to offshore federal waters, in order to connect reserves to be produced in the vicinity of Mobile Bay; (2) approval of its FERC Gas Tariff, Original Volume No. 1, including its proposed transportation Rate Schedules, FT and IT, and initial rates, all as more fully described therein; (3) a blanket certificate authorizing Jubilee to render self-implementing, open access transportation services; and (4) a blanket facilities certificate authorizing minor additions and other transactions, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Jubilee proposes to construct and operate approximately 81.6 miles of pipeline extending from a point near Bayou La Batre, Alabama on the west bank of Mobile Bay, where Jubilee proposes to connect with the pipline systems of Citrus Interstate Pipeline Company (CIPCO) and Transcontinental Gas Pipe Line Corporation (Transco) to points on production platforms in the federal offshore area, in Mobile Blocks 870, 908, 914, and 960 and Viosca Knoll Blocks 31 and 203. Jubilee also proposes to construct and operate metering facilities on such platforms and 6,000 HP of compression at an onshore facility in Mobile County.

Jubilee's proposed pipeline would connect gas reserves to be produced generally from the Mobile Bay and Viosca Knoll Areas. Jubilee states that estimates of proven and probable reserves in the Mobile Bay Area range from 3.5 Tcf to 10 Tcf. Estimates of the shallow Miocene production, which Jubilee's proposed pipeline would attach, currently indicate a maximum levelized production of 315 MMcf per day, Jubilee states. Jubilee asserts that proven and probable reserves from these blocks are now estimated at 366 Bcf, of which 146 Bcf is committed to Jubilee's system.

Jubilee states that the proposed pipeline is designed to transport 315 MMcf of natural gas per day with the proposed compression.

The total estimated cost of the proposed facilities is $66.91 million. Jubilee states that the facilities are scheduled to be constructed and in service by January 1, 1990 assuming all regulatory approvals are received before March 1, 1989.

Jubilee states that the proposed offshore pipeline route would parallel, in part, an existing pipeline right-of-way. The pipeline has been designed to minimize the crossing of offshore shipping lanes to the extent possible, and avoids wetland areas, oyster reefs, shell beds, and artificial reefs. The onshore segment, for most of its length, would also be adjacent to an existing pipeline right-of-way. Land use would not be significantly affected, and no heavily populated areas would be disturbed by the proposed pipeline or related facilities. The only adverse effects of the project, Jubilee asserts, would be insignificant and of limited duration, occurring during the construction of the proposed facilities.

Jubilee proposes to finance the proposed facilities with one hundred percent of equity contributions from its owners. Although Jubilee proposes to finance the project totally with equity contributions, its proposed rates assume a capitalization ratio of 40% debt and 60% equity for the initial three years of operation of the facilities.

Jubilee also requests a blanket certificate, under § 284.221, of the Commission's Regulations, authorizing it, on a self-implementing basis, to transport gas from one or more receipt points offshore to the proposed interconnections with the facilities of CIPCO and Transco in Mobile County, for possible further transportation.

Jubilee states it received a number of requests for information concerning

[1] The application was tendered for filing on July 29, 1988, however, the fees required by § 381.207 of the Commission's Rules (18 CFR 381.207) were not paid until August 12, 1988. Section 381.103 of the Commission's Rules provides that the filing date is the date on which fees are paid.

transportation services. Jubilee states it has provided and is in the process of providing such information as well as furnishing precedent agreements to those potential shippers indicating a desire for such. Jubilee advises that it has received several executed agreements and that it is maintaining a log of all requests received.

In order to provide all potential shippers an opportunity to obtain initial transportation services, Jubilee is proposing, for a period of 30 days following publication of this notice in the **Federal Register** (Request Period), to accept requests for both firm and interruptible transportation services. Jubilee states that it will file all executed precedent agreements as a supplement to Exhibit I to this application, shortly after the end of the Request Period.

For shippers requiring downstream transportation services, Jubilee anticipates that any applications required for authorization to render such services for these shippers would be filed with the Commision. At Docket No. CP87–415–001, CIPCO has filed for downstream transportation authorization for a number of shippers.

In an attempt to accommodate both the Commission's existing (18 CFR 284.221, *et seq.*) as well as its proposed policies (see Notice of Proposed Rulemaking issued on April 1, 1988 in Docket No. RM88–15–000) for offshore transportation services and to incorporate a pro rata allocation of capacity to the extent equitable and administratively feasible, Jubilee is proposing a modified pro rata allocation program. As to firm service, Jubilee proposes to allocate capacity on a pro rata basis if the total of firm requests received during a thirty-day open season period exceeds Jubilee's capacity. Shippers requesting firm transportation services subsequent to the open season period would, however, be allocated on a pro rata basis among all shippers with unsatisfied requests on Jubilee's log at the time any such capacity is released. As to interruptible transportation services, Jubilee is proposing to allocate capacity on a pro rata basis, based on daily volumes scheduled by Jubilee at the request of shippers.

Jubilee states that its proposed tariff is designed to generally reflect the Commission's current policies regarding the rendering of transportation services on a nondiscriminatory basis.

The maximum rates being proposed for firm transportation service under Rate Schedule FT consist of three charges: (1) A Reservation Charge, (2) a Commodity Charge, and (3) an Overrun Charge. The Reservation Charge, Jubilee states, is designed to recover all fixed costs associated with providing the firm transportation service including fixed operation and maintenance expense, return, income taxes, and taxes other than income. Jubilee is proposing a Commodity Charge designed to recover all variable costs, including the cost of compression facilities and depreciation expense which are proposed to be computed and recognized on a unit of throughput basis. In addition, Jubilee is proposing an Overrun Charge designed to be equal to the IT Commodity Charge for quantities received from a shipper in excess of its maximum contract quantity for any receipt point.

The maximum rate being proposed for interruptible transportation service under Rate Schedule IT consists of a Commodity Charge designed to recover all fixed and variable costs associated with providing the interruptible transportation service.

Under both the FT and IT Rate Schedules, a shipper is also required to reimburse Jubilee for any incidental charges incurred by Jubilee in connection with providing the transportation service. The proposed initial rates are based on the average costs of service and throughput for the first three years of operation following construction.

Jubilee is proposing, at its sole discretion, to charge any Shipper for transportation service, under either Rate Schedule FT or IT, a rate which is lower than the applicable maximum rates described above, provided that the total rate charged will not be less than the minimum rate which is designed to recover the variable cost associated with such service. Jubilee requests approval of its proposed minimum rates. Jubilee states this rate flexibility would allow Jubilee to respond to changing economic conditions that may exist from time to time.

Jubilee also requests a blanket certificate pursuant to Section 157.204 of the Commission's Regulations, authorizing the construction, operation, and abandonment of facilities, as well as other minor transactions eligible thereunder. Jubilee states that such a certificate would allow it, among other things, to make minor alterations and additions to its facilities with a minimum of delay, in order to connect its system to additional suppliers or to interconnect with the systems of other pipeline companies holding blanket transportation certificates under § 284.221.

Jubilee states that the Mobile Bay Area is expected to prove a significant source of long-term domestic gas supplies in the near future. Jubilee's proposed pipeline would provide facilities to move a portion of this gas onshore, thus allowing the country's major interstate pipeline systems access to such supplies. Jubilee asserts that the pipeline represents a crucial segment of the transportation network necessary for the ultimate distribution of this gas to markets throughout the country.

Comment date: September 16, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commisson's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19931 Filed 8-31-88; 8:45 am]

BILLING 6717-01-M

[Docket Nos. RP86-63-011 and RP86-114-006]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 29, 1988.

Take notice that on August 22, 1988, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets to be effective September 1, 1988.

Southern states that the purpose of the tariff filing is to revise Southern's currently effective rates in Docket Nos. RP86-63-000 and RP86-114-000 to comport with the Commission's decision in Docket No. RP83-58. As required by the Commission's decision in that case, Southern has revised its rates to reflect, among other things, use of the Modified Fixed Variable methodology for cost classification, allocation and rate design, a two-part demand rate with the D-2 rate calculated on the basis of customer D-2 nominations, use of a 37.5% imputed load factor in the design of the G rates and volumetric allocation of costs associated with Southern's Savannah-Wrens Line and unconnected production area segments.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19919 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-014]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 29, 1988.

Take notice that on August 22, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective September 1, 1988:

Third Revised Sheet No. 4C
Third Revised Sheet No. 4D
Third Revised Sheet No. 4E
Third Revised Sheet No. 4F
Third Revised Sheet No. 4G
Third Revised Sheet No. 4H

Southern states that the purpose of the filing is to revise Southern's currently effective transportation rates as established in Docket No. RP88-17-000 in compliance with the Commission's decision in Docket No. RP83-58. Consistent with that decision, Southern states that its rates have been designed on the basis of the Modified Fixed Variable methology with a two-part demand rate for its FT Rate Schedules including a D-2 component based on customer D-2 nominations. Southern further states that D-2 costs have been reallocated among and rates designed for its sales and transportation customers based on D-2 nominations received by Southern from its customers.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19920 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 88-135-001]

Valley Gas Transmission, Inc., Compliance Filing

August 29, 1988.

Take notice that on August 22, 1988, Valley Gas Transmission, Inc. (Valley), 9311 San Pedro Avenue, Suite 1200, P.O. Box 795099, San Antonio, TX 78279-5099, tendering for filing and acceptance the following tariff sheets as part of Original Volume No. 1 of its FERC Gas Tariff:

Substitute Second Revised Sheet Nos. 177-180
Substitute First Revised Sheet Nos. 180A and 180B.
Original Sheet No. 180C.

Valley states that these tariff sheets, which reflect a proposed effective date of June 1, 1988, are being filed in compliance with the Commission's letter order of July 21, 1988 in the above-captioned docket, which directed Valley to make certain corrections to its Revised PGA Clause to bring that Clause into compliance with Order Nos. 483 and 483-A. Valley states that these sheets comply with that directive. Valley further states that this filing has been served on its two jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 Northwest Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19921 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-236-000]

Williston Basin Interstate Pipeline Co.; Change in Rates

August 29, 1988.

Take notice that on August 24, 1988, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing the following tariff sheets, proposed to be effective September 24, 1988:

First Revised Volume No. 1

Thirteenth Revised Sheet No. 10

Original Volume No. 1-A

Ninth Revised Sheet No. 11
Twelfth Revised Sheet No. 12
Fourth Revised Sheet No. 97A

Original Volume No. 1-B

Second Revised Sheet No. 10
Second Revised Sheet No. 11

Original Volume No. 2

Fifteenth Revised Sheet No. 10
Seventh Revised Sheet No. 11B

Williston Basin states that the instant filing effects changes to its proposed rates filed on August 22, 1988 in Docket No. RP88-197-001 to reflect the development of revised rates for Rate Schedules S-2 and T-3. This action is proposed in order to conform the rates applicable to Rate Schedules S-2 and T-3 with its generally available rates to be implemented under NGPA section 311 authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19922 Filed 8-31-88; 8:45 am]

BILLING CODE: 6717-01-M

[Docket No. RP88-197-001]

Williston Basin Interstate Pipeline Co. Compliance Filing for Self-Implementing Transportation Under NGPA Section 311

August 29, 1988.

Take notice that on August 22, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff. These revised tariff sheets, along with supporting workpapers, are filed in compliance with the Commission's Order of July 22, 1988 in Docket No. RP88-197-000 and to correspond to the purchased gas cost levels approved by a Letter Order of July 29, 1988 in Docket No. TA88-4-49-000.

Copies of the instant filing were served upon Williston Basin's affected jurisdictional customers, interested state regulatory agencies and intervenors herein.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before Sept. 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-19918 Filed 8-31-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3439-7]

Fuels and Fuel Additives; Waiver Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 211(f) of the Clean Air Act (Act), the Administrator of EPA is conditionally granting a waiver for a fuel consisting of a blend of up to 15 percent methyl tertiary butyl ether (MTBE) in unleaded gasoline submitted by the Sun Refining and Marketing Company (Sun).

ADDRESS: Copies of documents relevant to this waiver application, including the Administrator's decision document, are available for inspection in public docket EN-88-02 at the Central Docket Section (LE-131) of the EPA, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:00 a.m. and 3:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light-duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38528 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case, September 12, 1988), the statute provides that the waiver shall be treated as granted.

Methyl tertiary butyl ether (MTBE) is already permitted in gasoline in volumes up to approximately 11 percent under EPA's substantially similar interpretive rule. Sun Refining and Marketing Company (Sun) has requested that EPA grant a waiver for the introduction into

commerce of an ether-gasoline fuel blend containing up to 15 percent MTBE by volume as measured by gas chromatograph or equivalent techniques. The waiver application specifies that the ether-gasoline blend must conform with the requirements of ASTM D–2 Proposal P–176, "Proposed Specification for Automotive Spark Ignition Engine Fuel" (subsequently adopted as ASTM D4814), and the fuel manufacturer must take all reasonable precautions, including identification and description of the product on shipping manifests, to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added, according to EPA limitations and guidelines. The application states that the marketing of the waiver blend would be handled in the same way as current marketing with other MTBE concentrations up to 11 percent.

For reasons specified in the decision document (available as described above), EPA has decided to conditionally grant Sun's request for a waiver. This decision is based on the determination that Sun has demonstrated that the ether-gasoline fuel, when used as specified in the decision documents, will not cause or contribute to a failure of 1975 or subsequent model year vehicles or engines to comply with the emission standards with respect to which such vehicles or engines were certified under section 206 of the Act. Thus, the waiver request is granted provided the following conditions are met:

(1) The final fuel consists of up to 15 percent by volume MTBE in unleaded gasoline;

(2) The final fuel must meet ASTM D4814 "Standard Specification for Automotive Spark Ignition Fuel" (a copy of which is in the docket);

(3) The fuel manufacturer must take all reasonable precautions, including identification and description of the product on shipping manifests, to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added.

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 54 U.S.C. 601 *et seq.*, because EPA has not published, and is not required to publish, a Notice of Proposed Rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(b), or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small entities.

This is a final Agency action of national applicability. Jurisdiction to review this action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of September 1, 1988. Under section 307(b)(2) of the Act, today's action may not be challenged later in separate judicial proceeding brought by the Agency to enforce the statutory prohibitions.

John Moore,

Acting Administrator.

[FR Doc. 88–19884 Filed 8–31–88; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Friday, September 23, 1988 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Congressional Status Report, Report on Tied Aid Study, Financial Institution Subcommittee, State/City Update, and other topics.

Public Participation: The meeting will be open to public participation; and the last 20 mintues will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871, not later than September 22, 1988. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to September 16, 1988 the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

Further Information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 88–19917 Filed 8–31–88; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Amendment to Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of Amendment to Proposed New System of Records: "Fitness Center Records System."

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the FDIC previously gave notice of the establishment of a new system of records entitled "Fitness Center Records System," to become effective September 26, 1988. This amendment deletes three routine uses from the system that have proven to be unnecessary.

DATE: The system, as amended, will become effective on September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Deputy Executive Secretary, (202) 898–3811, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the FDIC published notice in the **Federal Register** of a proposed new system of records entitled "Fitness Center Records System" pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, and indicated that the system would become effective on September 26, 1988, unless a superseding notice to the contrary is published before that date. *See* 53 FR 26310. This notice amends the system notice published July 12, but the system, as amended herein, will still become effective September 26.

The first three routine uses in the system notice published July 12 are as follows:

Information in the system may be disclosed:

(1) To the FDIC's staff nurse for inclusion in Health Unit files.

(2) To a physician retained by the FDIC in order to determine whether a physical examination is necessary before a program of exercise is undertaken by a member.

(3) To a member's personal physician where it is determined that a physical

examination is necessary before commencement of a program of exercise.

Upon further analysis, all three routine uses are unnecessary. The FDIC's staff nurse is an employee of the FDIC within the meaning of subsection (b)(1) of the Privacy Act, 5 U.S.C. 552a(b)(1), who has a need for Fitness Center records in the performance of her duties. This type of disclosure satisfies subsection (b)(1) of the Privacy Act, which provides that records in a system of records may be disclosed "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties," therefore making a routine use unnecessary. No disclosures of Fitness Center records will be made to a physician retained by the FDIC. The provision of a routine use for such disclosures in the original system notice was in error. Nor will disclosure of Fitness Center records be made to the Fitness Center member's personal physician without the prior written consent of the member. Disclosure is permitted to others under the Privacy Act with the prior written consent of the individual who is the subject of the records, 5 U.S.C. 552a(b). It is the policy of the Fitness Center to consult only with a member's personal physician about appropriate exercise programs, but only with the prior written consent of the member.

Accordingly, the Board of Directors of the FDIC revises the "Fitness Center Records System" to read as follows:

FDIC 30-64-0021

SYSTEM NAME:

Fitness Center Records System.

[Complete text appears at 53 FR 26310 (Jul. 12, 1988)]

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To the individual listed as an emergency contact, in the event of an emergency.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC, this 25th day of August 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-19890 Filed 8-31-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 88-21]

Allsouth Stevedoring Co., et al. v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Allsouth Stevedoring Company, Carolina Shipping Company, Ceres Corporation (Maryland), Palmetto Shipping & Stevedoring Co., Inc., Ryan-Walsh, Inc., Smith & Kelly Company, Southeast Alantic Cargo Operators, Southeastern Maritime Company, Stevens Shipping & Terminal Company, and Strachan Shipping Company ("Complainants") against the Georgia Ports Authority ("Respondent") was served August 26, 1988. Complainants allege that Respondent's practices in connection with the leasing of marine terminal facilities have resulted in violations of the Shipping Act, 1916 and the Shipping Act of 1984. Specifically, Complainants allege violations of sections 16, First, and 17, Shipping Act, 1916, 46 U.S.C. app. 815 and 816, and sections 10(d)(1), (d)(2), (d)(3), 10(b)(11), and (b)(12), 46 U.S.C. app. 1709(d)(1), (d)(2), (d)(3), (b)(11), and (b)(12).

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the future terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 28, 1989, and the final decision of the Commission shall be issued by December 28, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-19889 Filed 8-31-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Corestates Financial Group; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent

Corestates Financial Group, Philadelphia, Pennsylvania ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through Corestates Securities Corp., Philadelphia, Pennsylvania ("Company"), in the activities of underwriting and dealing in, to a limited degree, as well as privately placing as agent, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)). Company would conduct the proposed activities on a nationwide basis. Company is currently authorized under section 4(c)(8) of the BHC Act to provide discount securities brokerage services, related activities pursuant to the Board's Regulation T (12 CFR Part 220) and incidental activities such as offering custodial services, individual retirement accounts and cash management services.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite, deal in and place ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987); and *First Chicago Corporation*, 74 Federal Reserve Bulletin —— (Order dated August 4, 1988).

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as The Philadelphia

National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (1,2 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Philadelphia.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 20, 1988.

Board of Governors of the Federal Reserve System, August 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19870 Filed 8-31-88; 8:45 am]

BILLING CODE 6210-01-M

First & Peoples Bancshares, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 16, 1988.

A. **Federal Reserve Bank of Cleveland,** (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First & Peoples Bancshares, Inc., Russell, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First & Peoples Bank, Russell, Kentucky.

2. National City Corporation, Cleveland, Ohio, and FKYN Acquisition Corporation, Louisville, Kentucky; to acquire 100 percent of the voting shares of American Security Company of Bedford, Incorporated, Bedford, Indiana, and thereby indirectly acquire Farmers-Citizens Bank, Bedford, Indiana. Comments on this application must be received by September 22, 1988.

B. **Federal Reserve Bank of Chicago,** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Quad Cities First Company, Rock Island, Illinois, and thereby indirectly acquire First National Bank of the Quad Cities, Rock Island, Illinois, and Southpark National Bank of the Quad Cities, Moline, Illinois. In connection with this application, First of America Bancorporation, Illinois, Inc., Libertyville, Illinois, has applied to merge with Quad Cities First Company. Comments on this application must be received by September 22, 1988.

2. Hale Banking Corporation, Hale, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers & Merchants State Bank of Hale, Hale, Michigan.

3. Mechanicsville Trust & Savings Bank, Trustee of The Mechanicsville Trust and Savings Bank Employee Stock Ownership Plan & Trust, Mechanicsville, Iowa; to become a bank holding company by acquiring 75 percent of the voting shares of Mechanicsville Bancshares, Inc., Mechanicsville, Iowa, and thereby indirectly acquire the Mechanicsville Trust & Savings Bank, Mechanicsville, Iowa. Comments on this application must be received by September 22, 1988.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Raymond Bancorp, Inc., Raymond, Illinois; to acquire 100 percent of the voting shares of S.B.V. Banc Shares, Inc., Virden, Illinois, and thereby indirectly acquire State Bank of Virden, Virden, Illinois. Applicant will acquire the holding company through an interim holding company merger, and thereby form a new holding company to be called Raymond Acquisition Corporation.

2. Tritten Bancshares, Inc., St. Robert, Missouri; to acquire at least 80 percent of the voting shares of Bank of Plato, Plato, Missouri.

D. **Federal Reserve Bank of Minneapolis,** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Valley BankCorp., Seeley Lake, Montana; to become a bank holding company by acquiring 81.31 percent of the voting shares of First Valley Bank, Seeley Lake, Montana. Comments on this application must be received by September 22, 1988.

E. **Federal Reserve Bank of San Francisco,** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. Mission Valley Bancorp, Pleasanton, California; to merge with Lamorinda Financial Corporation, Lafayette, California, and thereby indirectly acquire Lamorinda National Bank, Lafayette, California.

2. U.S. Bancorp, Portland, Oregon; to acquire 100 percent of the voting shares of Bank of Loleta, Eureka, California. Comments on this application must be received by September 22, 1988.

Board of Governors of the Federal Reserve System, August 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-19871 Filed 8-31-88; 8:45 am]

BILLING CODE 6210-01-M

First Bank System, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire approximately $66 million of commercial loans and participations from Columbia Savings, Denver, Colorado, and thereby engage in making, acquiring, or servicing loans or other extensions of credit for the account of the applicant or for the account of others, such as would be made by a commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Colorado.

Board of Governors at the Federal Reserve System, August 25, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–19872 Filed 8–31–88;8:45am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the changes in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 15, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Bruce D. Howe, Lake Ariel, Pennsylvania; to acquire an additional 5.69 percent of the voting shares of Lake Ariel Bancorp, Inc., Lake Ariel, Pennsylvania, and thereby indirectly acquire First National Bank of Lake Ariel, Lake Ariel, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. C.D. Roberts, Pikeville, Kentucky; to retain 15.11 percent of the voting shares of Trans-Kentucky Bancorp, Inc., Pikeville, Kentucky, and thereby indirectly acquire The Citizens Bank of Pikeville, Pikeville, Kentucky.

C. **Federal Reserve Bank of St. Louis** (Randall, C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Walter J. Carlson, Josephine Carlson, William A. Carlson, and Ralph C. Carlson, all of Marion, Arkansas; to acquire an additional 17.80 percent of the voting shares of Fidelity Bancorp, Inc., West Memphis, Arkansas, and thereby indirectly acquire Fidelity National Bank of West Memphis, West Memphis, Arkansas.

1. Earl R. Wilson, Jackson, Mississippi; to acquire 21.53 percent of the voting shares of Citizens Financial Corporation, Belzoni, Mississippi, and thereby indirectly acquire Citizens Bank & Trust Company, Belzoni, Mississippi.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Barbara A. Kimbrough, Broken Arrow, Oklahoma; to acquire an additional 7.50 percent of the voting shares of Arkansas Valley Bancshares, Broken Arrow, Oklahoma, and thereby indirectly acquire The Arkansas Valley State Bank, Broken Arrow, Oklahoma.

Board of Governors of the Federal Reserve System, August 23, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–19873 filed 8–31–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Family Support Administration, Statement of Organization, Functions and Delegations of Authority

Parts A, the Office of the Secretary (OS) and Part M, the Family Support Administration (FSA) statement of organizations, functions and delegation of authority of the Department of Health and Human Services are being amended to reflect the transfer of the State data systems review, payment integrity and quality assurance functions from the OS to the FSA.

Specifically, Part A, Chapter AMH, Office of the Assistant Secretary for Management and Budget, Office of Procurement Assistance and Logistics, as last amended at 52 FR 866, 1/9/87; and Part M, Chapters M, the Family Support Administration, MB, the Office of Management and Information Systems and MH, the Office of Family Assistance at 51 FR 35561, 10/6/86.

Part M, Chapter MH, Office of Family Assistance as last amended at 52 FR 35960, 9/24/87, for changes within the Division of Work Programs.

Below is a list of the changes:

A. Amend Part A as follows:

1. Under Chapter AMH, Paragraph AMH.00 Mission, delete the last sentence.

2. Under Chapter AMH, paragraph AMH.10 Organization, delete line 18, "Division of State Data Systems," line 20, "Payment integrity Staff" and line 21, "Integrated Quality Control Assurance Staff."

3. Under Chapter AMH, AMH.20 Functions make the following changes, under: (1) First paragraph, delete Item #15; (2) paragraph "C. Office of Assistance Policy and State Systems Review" delete Items #1, #4 and #7 and renumber Items #2, #3, #5 and #6 as Items #1 through #4; (3) Delete paragraphs "C.(a) The Division of State Data Systems," C.(c) "The Payment Integrity Staff" and C.(d) "The integrated Quality Control Assurance Staff in their entirety; and (4) change paragraph C. (b) "Division of Assistance and Cost Policy" to C.(a).

B. Amend Part M as follows:

1. Amend Chapter M, M.00 Mission, by adding the following paragraph at the end of the last sentence.

Provides leadership and guidance for the Department in the development and implementation of policies and standards applicable to State data systems development, payment

integrity, and quality assurance activities.

2. Delete Chapter MB, Office of Management and Information Systems in its entirety and replace with the following:

MB.00 Mission. The Office of Management and Information Systems (OMIS), a staff office of the FSA, advises the Administrator in the areas of internal administration and management of FSA, internal information systems in FSA and external state automated systems designed to support all FSA programs except the Child Support Enforcement program. It establishes policy, requirements, standards and guildelines for information systems for the Department to support programs funded under the Social Security Act and management improvement initiatives (i.e., Income Eligibility Verification System-IEVS and Systematic Alien Verification for Entitlement-SAVE) involved in the administration and operation of federally funded programs. The Office provides leadership, guidance and liaison throughout FSA on administrative policies, procedures and activities including: Personnel management, employee development, management studies and assessments, facilities, telecommunications, material management and similar supporting services. The Office serves as the focal point for liaison with FSA regional offices.

MB.10 Organization. The Office of Management and Information Systems is headed by the Associate Administrator who reports directly to the Administrator. The Associate Administrator also serves as the Associate Deputy Director for Information Systems Managment, Office of Child Support Enforcement. The Deputy Associate Administrator assists the Associate Administrator in carrying out his/her responsibilities. The Office is organized as follows:

Office of the Associate Administrator (MB)
State Data Systems Staff ( )
State Eligibility Systems Staff ( )
Division of Management and Regional Operations (MB1)
Division of State Systems Management (MB2)
Division of Federal Systems Management (MB3)
Division of Facilities and Telecommunications Management (MB4)

MB.20 Functions. A. Office of the Associate Administrator directs and coordinates all elements of the Office of Management and Information Systems; provides guidance and services to FSA staff and program components, in accordance with HHS and other federal policy, in the following areas: Personnel; administrative procedures, policies and requirements; support services; facilities and telecommunications; and management analysis. The Office directs activities to plan, budget, direct, promote and control information technology for AFDC, Refugee and Community Services programs and internal operations. It provides oversight of relationships between FSA headquarters and FSA regional offices to insure effective operations, communications and regional representation on FSA issues. The Office coordinates implementation of the Equal Opportunity and Affirmative Action programs for FSA in accordance with Departmental policies and procedures.

1. State Data Systems Staff is responsible for developing departmental policies and procedures under which States obtain Federal financial participation in the cost of Automatic Data Processing (ADP) systems to support programs funded under the Social Security Act. Acts as a central receiving point for, and coordinates the Departmental review and approval of, State requests, for Federal Funding in the cost of ADP systems acquisition. Coordinates the provision of technical assistance to States on information systems projects that will advance the use of computer technology in the administration of walfare and social services programs in the States.

2. State Eligibility Systems Staff is responsible for planning, designing, coordinating and implementing major departmental and governmentwide management improvement initiatives (i.e., Income Eligibility Verification System—IEVS, Systematic Alien Verification for Entitlement—SAVE) involved in the administration and operation of federally funded programs. Serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity (IEVS), welfare system integration and the associated areas of management improvements. Convenes and provides leadership to workgroups and task forces to assess current grantee or contractor systems with the goal of examining the extent of wasteful redundancy and inefficient systems design and promoting creative solutions to these problems. Establishes minimum uniform standards for the approval of integrated and appropriately interacted welfare managment systems. Identifies and assesses grantee management and operational approaches and policies in the areas of payment integrity and systems management. Promotes the rapid adoption of successful and effective approaches by States and the integration of such approaches into existing and evolving State systems. Integrates the dissemination and transfer of recognized and acceptable cost effective best approaches with current agency and departmental meetings, forums and expositions for review and consideration by State welfare agencies. Provides leadership and guidance to interagency work groups in the area of payment integrity initiatives when senior officials of the Executive Branch request it of the Department.

B. Division of Management and Regional Operations provides oversight and direction to meet the administrative, management and operational needs of FSA components. The Division provides liaison between FSA components and the Office of the Assistant Secretary for Personnel to provide personnel services including position management, recruitment, employee relations and staff development. It manages the performance recognition systems and the system of awards for FSA. It maintains systems to track personnel actions and to keep FSA informed about employee programs and benefits.

The Division provides administrative and support services to FSA components including coordination of services for equipment, supplies, mail, messenger, printing, property inventory, publication distribution, small purchases, forms/records management, payroll and travel. It controls ADP funds, ADP inventory and ADP project approvals. It provides staff work for the Associate Administrator by advising and reviewing advisory and assistance services contract proposals. It provides meeting and conference planning services to FSA employees. It plans, organizes and conducts management studies, analysis and evaluations of administrative, management and functional processes. It studies structural, functional and operational problems of interest to the Administrator. The Division acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval and to coordinate and track OMB reports clearance requirements and other organization management requirements; maintains official organizational files for FSA; prepares formal program, administrative and personnel delegations of authority for the Administrator. The Division

coordinates and tracks administrative plans for personnel, management improvement plans and productivity improvement plans.

It serves as the FSA focal point for liaison between FSA regional offices and the Administrator on region-related matters; supports the FSA Regional Administrators in administering regional office activities and establishing and implementing crosscutting program and operational initiatives; develops and implements systems and procedures for communicating with the regional offices and for monitoring and evaluating regional office operations; plans for the utilization of regional resources to accomplish approved objectives; develops work measurement techniques and tools and provides tracking and evaluation of the use of regional resources; works with FSA components to plan and clarify requirements placed on regional offices; monitors regional involvement in operational planning initiatives to assure fulfillment of FSA goals and objectives; collects and analyzes information on regional program, operational and administrative issues for submission to the Administrator.

C. Division of State Systems Management reviews and analyzes state requests for federal financial participation for automated systems development activities which support FSA's programs, except the Child Support Enforcement programs. It provides assistance to states in developing or modifying automation plans to conform to federal requirements; recommends approval/disapproval of state funding requests. The Division monitors approved state systems development activities; conducts periodic reviews to assure state compliance with regulatory requirements applicable to automated systems supported by federal financial participation. It provides guidance to states on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve FSA through the use of automated systems. It provides guidance to states on automated systems security and privacy protection and monitors state compliance with data utilization and safeguarding requirements.

D. The Division of Federal Systems Management oversees and coordinates computer systems design, development, maintenance and services to FSA programs. It provides technical assistance on automated systems to state and local agencies for Federal Parent Locator Services, Federal Tax Refund Offset Service and Project 1099; designs, develops and implements application systems to support FSA program requirements; manages and maintains management information systems for all FSA components.

The Division coordinates the design, development and implementation of the National Integrated Quality Control System with the Food and Nutrition Service of the Department of Agriculture and the Health Care Financing Administration. The Division manages, maintains and operates the agency mainframe computer center and telecommunications network; provides for the planning, procurement, and implementation of computer center upgrades as appropriate for support of FSA program initiatives. It develops long-range ADP plans; develops the information resource management (IRM) policy, procurement plan and budget. The Division coordinates the development of the FSA ADP Security Management Plan and enforces ADP directives to ensure compliance; maintains an inventory of ADP software; develops and implements procurement strategies for major ADP acquisitions. The Division manages, maintains and operates FSA's minicomputers and network of personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing and for executive information systems; manages an information center offering services such as design assistance, application evaluation, user training, new product evaluation, and specialized technical assistance.

E. The Division of Facilities and Telecommunications Management directs and coordinates services and support to meet FSA's space management, facilities services and voice and data telecommunications needs. It develops and implements policies, standards, programs and procedures to assure adequate general services for FSA. The Division develops and implements FSA's space and facilities management plans and activities, including identification and negotiations for office space, allocations of space, coordination of physical moves, and planning and design of office layouts. It serves as liaison with HHS, General Services Administration (GSA) and outside vendors to provide facilities services including acquisition of facilities and equipment, building security, property management, inventory control, health and safety programs, labor services, facilities for handicapped employees and parking. In coordination with FSA program and staff offices, the Division develops telecommunications plans and places orders for voice and data communications services; provides liaison with HHS, GSA and private communications firms on telecommunications matters; provides assistance to FSA components to identify telecommunications needs and to use communications equipment and systems; monitors standard level user charges and telecommunications charges; and assists with budgetary projections and cost estimates for telecommunications services.

3. Amend Chapter MH, Office of Family Assistance, Section MH.00 Mission by deleting it in its entirety and replacing it with the following:

MH.00 Mission. The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following public assistance programs; Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the Emergency Assistance Program, the U.S. Repatriate Programs and the Work Incentive Program (WIN) which is jointly administered by FSA and the Assistant Secretary for Employment and Training, Department of Labor. Provides management oversight for the Department in the implementation of major management improvement initiatives directed toward improving quality control in the administration of federally funded programs.

OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. Develops and implements standards and policies for regulating integrated quality control activities of the Department and the Operating Divisions. The Office assesses the performance of states in administering these programs; reviews State planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to federal law and regulations in State plans for public assistance program administration.

4. Amend Chapter MH, Section MH.10 Organization to (1) remove "The U.S. Repatriate Program Staff (MHC)" and (2) replace the Division of Work Programs (MHC4) with "The Division of Special Initiatives (MHC4)."

5. Amend Chapter MH, Section MH.20 Functions by deleting paragraph "B. The

Immediate Office of the Director for Family Assistance" in its entirety and replacing it with the following:

B. The Immediate Office of the Director for Family Assistance provides the Director and Deputy Director with staff assistance on the full range of their responsibilities. It provides management support for OFA; ensures coordination and integration of operational activities among OFA components; receives, controls and coordinates replies to all public, congressional and federal inquiries on administrative and national welfare issues; and provides liaison with the Office of Communications to promote FSA's public affairs programs and initiatives.

Provides management oversight to the Department in the implementation of major management improvement initiatives directed toward improving quality control in the administration of federally funded programs. Administers the day-to-day aspects of major quality control initiatives which involve several departmental components or, in the case of interagency initiatives, several departments and/or independent agencies, when senior officials of the Executive Branch request the Department to provide this management direction. Develops, and implements standards and policies for regulating integrated quality control activities of the Department and the Operating Divisions. Monitors quality assurance communication between officials and staff to affected Federal and State agencies to assure open lines of communication.

6. Amend Chapter MH, Section MH.20 Functions by removing paragraph "C. The U.S. Repatriate Program Staff" in its entirety.

7. Amend Chapter MH, Section MH.20 Functions, by deleting paragraph "G. Division of Work Programs" and replacing it with the following:

G. Division of Special Initiatives provides direction, consultation and guidance to promote cost-effective work opportunity programs for AFDC applicants and recipients as an alternative to welfare dependency. The Division develops program instructions on the day-to-day administration of FSA's responsibilities for the Work Incentive Program (WIN); and provides liaison with States, FSA regional offices, the Congress, other federal agencies and public interest groups to develop consistent work program policies and appropriate related services for welfare applicants/recipients. Provides policy development and operational direction for the U.S. Repatriate Programs and State Emergency Welfare Preparedness. It develops and implements strategies to assist States in establishing, expanding and/or improving work programs including: The conduct of needs assessments; identification of successful practices; and information exchange through technology transfers, publications and resource networks.

Dated August 24, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-19878 Filed 8-31-88; 8:45 am]

BILLING CODE: 4110-60-M

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is hereby given that Chapter S3 is being amended to reflect the deletion of the Office of Legislative and Regulatory Policy (OLRP). Chapter S5 is being amended to reflect acquisition of OLRP responsibilities and other functional and organizational realignments within the Office of the Deputy Commissioner, Policy and External Affairs (ODCPEA). The new material and changes are as follows:

Chapter S3

Office of the Deputy Commissioner, Programs

S3.00 Mission
S3.10 Organization
S3.20 Functions

Section S3.00 *The Office of the Deputy Commissioner, Programs*—(Mission):

Delete second sentence:

"Directs the development and conduct of legislative planning for the Agency, and the formulation and issuance of program objectives and policies across program lines."

Section S3.10 *The Office of the Deputy Commissioner, Programs*—(Organization):

Delete:

C. The Office of Legislative and Regulatory Policy (S3H).

Reletter the remaining Subsections C. through G.

Section S3.20 *The Office of the Deputy Commissioner, Programs*—(Functions):

Delete:

C. The Office of Legislative and Regulatory Policy (S3H) in its entirety.

Reletter the remaining Subsections C. through G.

Subchapter S3H

Office of Legislative and Regulatory Policy

Delete the subchapter in its entirety.

Section S5.00 (Mission) *The Office of the Deputy Commissioner, Policy and External Affairs,* add the following sentence to the current paragraph:

"Directs the development and conduct of legislative planning for the Agency, and the formulation and issuance of program objectives and policies across program lines."

Section S5.10 Organizations. *The Office of the Deputy Commissioner, Policy and External Affairs,* add the following:

E. The Management Staff (S5A-1).

F. The Office of Legislation and Congressional Affairs (S5B).

Section S5.20 Functions. *The Office of the Deputy Commissioner, Policy and External Affairs,* add the following:

E. The Management Staff (S5A-1) plans, coordinates and provides a broad range of administrative services for DCPEA and the managerial staff within the components that comprise the Office of Policy and External Affairs organization. Provides management support in the areas of human, financial and materiel resources management, including compilation and execution of DCPEA budgets and the conduct of management studies resulting in recommendations for improving management practices and operations. Designs, implements and maintains DCPEA-automated information and communications systems.

F. The Office of Legislation and Congressional Affairs (S5B) develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs, and analyzes and develops recommendations on related proposals. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting services.

Delete Subchapter S5E *The Office of Governmental Affairs* in its entirety and replace with the following:

Subchapter S5E

Office of Governmental Affairs

S5E.00 Mission
S5E.10 Organization
S5E.20 Functions

Section S5E.00 *The Office of Governmental Affairs*—(Mission): The Office of Governmental Affairs (OGA)

implements and directs a program designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, other Federal agencies and State and local governments, for purposes of securing understanding, cooperation and acceptance for SSA programs, policies and procedures and of providing avenues of public participation in the decisionmaking processes of SSA. Plans, directs, coordinates, implements and evaluates SSA's nationwide public affairs program, which involves interaction with other Federal and State agencies, and other organizations concerned with public affairs programs and activities. Develops programs and materials to ensure public knowledge and understanding of protections, rights and responsibilities under programs administered by SSA. Administers SSA activities under the Freedom of Information Act (FOIA), including policy decisions. Establishes, promulgates and assesses SSA policy for answering public, congressional and other sensitive inquiries. Controls analyzes and responds to inquiries and conducts a quality appraisal of written responses prepared throughout SSA. Directs the internal communications program in SSA.

Section S5E.10. *The Office of Governmenal Affairs*—(Organization): OGA, under the leadership of the Associate Commissioner for Governmental Affairs, includes:

A. The Associate Commissioner for Governmental Affairs (S5E).

B. The Deputy Associate Commissioner for Governmental Affairs (S5E).

C. The Immediate Office of the Associate Commissioner for Governmental Affairs (S5E).

D. The Office of Communications Technology (S5EB), which includes:

1. The Technical Services Staff (S5EB1).

2. The Visual Graphics Staff (S5EB3).

3. The Media Production Staff (S5EB4).

4. The Media Development Group (S5EB5).

E. The Office of Information (S5EH), which includes:

1. The Editorial Planning and Evaluation Staff (S5EH2).

2. The Internal Communications Staff (S5EH3).

F. The Office of Public Inquiries (S5EP), which includes:

1. The Division of Correspondence Appraisal and Policy (S5EP5).

2. The Inquiries Processing Divisions I (S5EP6) and II (S5EP7).

3. The Freedom of Information Staff (S5EM1).

G. The Office of External Affairs (S5EM).

1. The Community Affairs Staff (S5EP1).

2. The External Liaison Staff (S5EM2).

3. The Regional External Affairs Staff (S5EM3).

4. The Regional Support and Special Projects Staff (S5EM4).

Section S5E.20 *The Office of Governmental Affairs*—(Functions):

A. The Associate Commissioner for Governmental Affairs (S5E) is directly responsible to DCPEA for carrying out OGA's mission and provides managerial direction to the major components of OGA.

B. The Deputy Associate Commissioner for Governmental Affairs (S5E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Governmental Affairs (S5E) provides the Associated Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Communications Technology (OCT) (S5EB) directs and implements technical information communications functions for the Agency. The Office develops the Agency's goals and objectives for using the media to promote SSA programs and policies. The Office is responsible for the design and production of audiovisual and graphics materials. The Office utilizes state-of-the-art technological theories, principles and methodologies, in determining and creating the most effective means of communicating the Agency's information. OCT includes the following components and functions:

1. The Technical Services Staff (S5EB1).

a. Plans, develops and directs electronic systems required for the Agency's television and audiovisual productions and mangement communications.

b. Coordinates all technical activities related to the Agency's television and audiovisual production system.

2. The Visual Graphics Staff (S5EB3).

a. Plans and designs public information audiovisual materials. Provides advice and consultation to other components concerning the design of audiovisual materials.

b. Directs the preparation of specifications for media materials produced by professional specialists under contract.

c. Produces materials in various media for the observance of special ceremonial events.

3. The Media Production Staff (S5EB4).

a. Plans, writes, directs and edits motion picture and television productions covering all aspects of Social Security for public information, SSA training and management information purposes.

E. The Office of Information (S5EH) directs SSA's information activities to ensure public knowledge and understanding of programs administered by SSA. The Office develops and evaluates goals, objectives, policies, standards and guidelines for SSA public information needs, and carries out programs to inform the public of the purposes and provisions of SSA-administered programs, program changes and people's rights and responsibilities under these programs. The Office prepares and determines distribution of a wide variety of public information materials on all phases of SSA-administered programs, evaluates the quality of informational materials to ensure a high-quality product and helps in public affairs training in SSA. The Office of Information (OI) includes the following components and functions:

1. The Editorial Planning and Evaluation Staff (S5EH2).

a. Develops and evaluates goals and objectives, policies, standards and guidelines for SSA public information needs. Prepare public information workplans and SSA's National Communications Objectives.

b. Provides direction and quality control of information materials for the administration of SSA public affairs and public information programs.

c. Writes, edits and produces a variety of public information materials. Provides advice and consultation to other components on editorial policy and methods of initiating and developing informational programs.

d. Conducts editorial reviews and approves content, format and style of Social Security information materials for use in all media.

e. Plans and conducts a public information management program. Determines public information strategies for a wide variety of public information materials on all phases of SSA-administered programs.

f. Designs and conducts broad evalaution programs, incorporating and coordinating various evaluation methods, techniques and efforts.

2. The Internal Communications Staff (S5EH3).

a. Directs the internal communications program in SSA. Publishes a variety of information materials, including a monthly national employee magazine and Central Office Bulletin. Prepares and edits administrative reports and presentations.

b. Provides assistance to and appraises internal communications activities in SSA field organizations; identifies weaknesses in communications SSA-wide, and recommends improvements.

c. Writes and produces periodic taped programs used nationwide on SSA television monitors for purposes of internal communications with the field components.

F. The Office of Public Inquiries (S5EP).

Establishes and assesses SSA policy for answering public, Congressional and other inquiries. Responsible for Freedom of Information activities, including policy decisions. Receives, analyzes and controls high priority written and telephone inquiries; prepares responses when appropriate and refers those inquiries requiring specialized knowledge to the appropriate component for response. Studies correspondence practices in use throughout SSA. Develops recommendations to improve the effectiveness of SSA's correspondence program. Reviews and clears all computer-generated notices and form letters. With Office of Human Resoruces, Training and Management Analysis' (OHRTMA's) approval and support, participates in training programs in SSA headquarters and the field components to improve correspondence with the public. Provides advice and assistance to SSA officials and liaison with HHS on public correspondence matters. The Office of Public Inquiries (OPI) includes the following components and functions:

1. The Freedom of Information Staff (S5EP8).

a. Directs FOIA activities in SSA headquarters, develops SSA's FOIA policies and procedures, and prepares the Annual Report to Congress on these activities.

b. Decides whether records are required to be dislcosed to members of the public. Develops decisions on FOIA appeals for the Commissioner and Deputy Commissioner. Identifies problems in these areas, and recommends corrective action as necessary.

2. The Division of Correspondence Appraisal and Policy (S5EP5).

a. Develops SSA correspondence program objectives and SSA-wide policies and procedures necessary to implement these objectives.

b. Reviews correspondence practices in use throughout SSA, assessing adequacy of, and adherence to, established policies and procedures.

c. Conducts ongoing appraisal and special studies to evaluate the quality of correspondence produced SSA-wide, identifies problem areas and makes recommendations for corrective action to the appropriate official.

d. With OHRTMA's approval and support, participates in training programs in SSA field and headquarters components to improve the quality of SSA correspondence.

e. Plans for effective and coordinated use of the SSA automated correspondence system to control, track, file and retrieve inquiries and replies throughout SSA.

3. The Inquiries Processing Division I (S5EP6) and II (S5EP7).

a. Receives, controls and replies to incoming correspondence.

b. Performs necessary technical and general research on inquiries dealing with all areas of Social Security. Prepares written responses to the majority of these inquiries and the necessary acknowledgment, referral and transfer letters for those requiring the signature of SSA component heads below the level of Commissioner.

c. Determines, from correspondence received, significant trends which may point up programmatic or procedural difficulties and possible public relations problems and brings these developments to the attention of the appropriate SSA components.

d. Files and retrieves SSA correspondence and replies controlled in the SSA automated correspondence system and operates the terminals for this system. Tracks, follows up and furnishes information on the status of high priority inquiries and responses processed in SSA.

G. The Office of External Affairs (S5EM) implements and directs programs designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, and other Federal agencies and State and local governments. The Office presents, explains, advocates and defends the views and objectives of SSA. It provides the avenue for bringing the views and opinions of influential organizations into the Agency. The Office is responsible for reviewing and considering the validity of SSA-related issues and concerns raised by a variety of external sources and recommending changes or referring the matter to other SSA components for further study. The Office facilitates operational dealings between these organizations and other SSA components. The Office is also responsible for directing, coordinating and supporting the regional public affairs/public information activities.

1. The Community Affairs Staff (S5EM1).

a. Plans and implements a program of community liaison for the Baltimore and Washington, DC metropolitan areas. Deals primarily with SSA's role as a large employer and local institution.

b. Identifies problems or issues which affect SSA's relationships with the communities.

c. Provides advisory and consultative services to community groups and other governmental agencies interested in developing community affairs programs related to Social Security programs.

d. Coordinates with the Office of Information Management, Acquisition and Logistics, Office of Materiel Resources, on the SSA headquarters tour programs, modifying the standard tours for special audiences, as necessary.

2. The External Liaison Staff (S5EM2).

a. Is responsible for SSA's interaction and liaison with national-level leadership of key special interest groups and organizations, other Federal agencies, and State and local governments. This includes responsibility for presenting, explaining, advocating and defending SSA programs and initiatives. Through influence gained with the leadership of these organizations and agencies, facilitates operational dealings between these organizations and other SSA components.

b. Develops guidelines and approaches which set the tone for all SSA relationships with Federal, State and local agencies.

c. Reviews all SSA proposals changing or establishing policies, regulations and operating procedures to determine what effect they might have on intergovernmental relations with the public or external affairs initiatives.

3. The Regional External Affairs Staff (S5EM3).

a. Provides onsite leadership and direction to the regional SSA external affairs program. Analyzes and evaluates regional public affairs activities, and issues regional public affairs policies consistent with nationally-issued policies.

b. Serves as the primary regional contact with the news media, community organizations and congressional staff on questions and problems of a regionwide nature.

c. Plans, directs and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs; and coordinates SSA's regional interaction with other agencies and organizations, including the extension and improvement of social services.

d. Manages and oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs.

4. The Regional Support and Special Projects Staff (S5EM4).

a. Serves as primary liaison with the Regional External Affairs Officers (EAOs), keeping them informed of SSA and HHS public information policy, plans and activities. Provides guidance and assists in interpreting, analyzing, evaluating public affairs/public information needs of the regions.

b. Initiates and directs a variety of short-range to long-range special projects or assignments of substantial significance to OGA. Coordinates the work task forces and workgroups representing all or several SSA components for the purpose of solving complex problems resulting from adverse impacts of SSA programs and program service delivery on special groups or the general public.

Delete Subchapter S5R *The Office of Policy* in its entirety and replace with the following:

Chapter S5R

Office of Policy

S5R.00 Mission
S5R.10 Organization
S5R.20 Functions

Section S5R.00 *The Office of Policy*—(Mission): The Office of Policy (OP) directs the planning and analysis of programs administered by SSA: the Retirement, Survivors and Disability Insurance (RSDI) programs and the Supplemental Security Income (SSI) program. It coordinates the development of policies across program lines to insure consistency in implementation. The Office broadly formulates, promulgates and interprets programs, objectives and policy. It directs studies and makes recommendations about the problems of income maintenance, poverty and the contributions that social insurance and related programs may provide for solving these problems. It conducts the broad research and the statistical programs of the Agency. The Office develops, promulgates and reviews all program regulations for consistency. It also reviews regulations for directly-administered programs for consistency with statutory and congressional intent and with SSA policy decisions and requirements. The Office insures that policies are coordinated internally and that all instructional materials developed are compatible with overall operating policies and practices and that all notices are clear. The Office evaluates the effectiveness of national policies in meeting program goals, and recommends program modifications. It serves as a focal point for international policy matters, other than those relating to refugee programs.

Section S5R.10 *The Office of Policy*—(Organization): The Office of Policy, under the leadership of the Associate Commissioner for Policy, includes:

A. The Associate Commissioner for Policy (S5R).

B. The Deputy Associate Commissioner for Policy (S5R).

C. The Immediate Office of the Associate Commissioner for Policy (S5R).

D. The Policy Analysis and Integration Staff (S5R).

E. The Office of Research and Statistics (S5RH).

1. The Publications Staff (S5RH1).

2. The Program Analysis Staff (S5RH2).

3. The Division of Economic Research (S5RH3).

4. The Division of Statistical Operations and Services (S5RH4).

5. The Division of Statistical Analysis (S5RH5).

F. The Office of International Policy (S5RJ).

1. The Division of International Program Policy and Agreements (S5RJ1).

2. The International Studies and Organizations Staff (S5RJ2).

3. The International Activities Staff (S5RJ3).

G. The Office of Regulations (S5RB).

1. The Division of Regulations (S5RB1).

2. The Division of Technical Documents and Privacy (S5RB2).

H. The Office of Directives Management (S5RG).

1. The Division of Policy, Planning, Analysis and Review (S5RG1).

2. The Division of Publications and Systems Management (S5RG2).

3. The Notice Policy Staff (S5RG3).

Section S5R.20 *The Office of Policy*—(Functions):

A. The Associate Commissioner for Policy (S5R) is directly responsible to DCPEA for carrying out OP's mission, and provides general supervision to major components of OP.

B. The Deputy Associate Commissioner for Policy (S5R) assists the Associate Commissioner in carrying out his/her responsibilities, and performs other duties the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Policy (S5R) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of OP components.

D. The Policy Analysis and Integration Staff (S5RA) serves as the focal point throughout the Agency to make certain that strategic policy decisions are properly translated into operational policies and procedures and are implemented in an effective manner. Provides the Executive Staff with information on operational effects of policy decisions under consideration and is responsible for designing, implementing and assessing the results of operational models which test proposed changes in policy. The Staff analyzes issues involving existing agency policies and options for change in those policies. It provides analysis of, and advice on, significant policy issues to the Associate Commissioner for Policy, the DCPEA and the Policy Council, and serves as secretariat to the Policy Council.

E. The Office of Research and Statistics (S5RH) directs the planning and analysis of program policy, and develops and conducts SSA's research and statistical program. It conducts research on income security, redistribution effects on the economy of Social Security benefits, and financing and adequacy of cash benefits. It establishes linkages of SSA data with data from other statistical and record systems, and develops and simulates economic models to analyze the impact of present and projected program alternatives under various conditions. The Office publishes research findings, compiles and publishes statistical data and provides SSA-wide statistical leadership and methodology about statistics.

The Office of Research and Statistics (ORS) includes the following components and functions:

1. The Publications Staff (S5RH1).

a. Advises ORS on the development, organization and presentation of research and statistical studies to be published.

b. Directs a continuous review of the research publications program, analyzes material submitted for publication and

surveys the effectiveness of ongoing publication series.

C. Assesses informational needs of the SSA staff, other Governmental agencies, social scientists and the public for data and findings from the ORS research program.

2. The Program Analysis Staff (S5RH2) plans, designs and conducts surveys of program target groups and performs policy-relevant research. Analyzes the impact of proposed policy options and legislative proposals, analyzes special high priority issues, and prepares briefing materials for SSA administrators.

3. The Division of Economic Research (S5RH3).

a. Plans, directs and executes issue-oriented research to provide information about relationships between the Social Security program, the economy, and other aspects of society.

b. Makes program revenue projections and interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

c. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effect of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

4. The Division of Statistical Operations and Services (S5RH4).

a. Plans and directs the development, implementation, maintenance and revision of a broad statistical program to support the research and analysis responsbilities of ORS concerning the basic RSDI and SSA program statistics.

b. Provides statistical services throughout SSA and technical consultation to users of these statistics, both within and outside SSA.

5. The Division of Statistical Analysis (S5RH5).

a. Plans and develops a continuing program of research and analysis related to Social Security, SSI, other social welfare programs and to the employment, earnings and coverage status of the nation's workforce.

b. Plans and directs the collection for publication of Old-Age Survivors and Disability Insurance and SSI statistics, as well as statistics on employment and earnings covered under the Social Security program.

F. The Office of International Policy (S5RJ) represents SSA on matters of international research and statistics within HHS, within the academic community and in coordination with SSA's OGA, with other public and private agencies and organizations. Serves as SSA liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security agreements with foreign governments and develops policies and procedures to implement the agreements. Provides programs of training and technical consultation on Social Security and related fields to foreign Social Security officials and other foreign experts. Plans and coordinates programs of technical assistance to foreign Social Security institutions. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury on Social Security program matters outside the United States. The Office of International Policy includes the following components and functions:

1. The Division of International Program Policy and Agreements (S5RJ1).

a. Plans, develops and evaluates program policies and procedures relating to foreign claims administration and beneficiaries, and modifies policies and procedures to meet program requirements in foreign countries.

b. Negotiates international Social Security (totalization) agreements with foreign governments and takes the actions necessary to secure their approval, develops and evaluates agreements and administers the coverage provisions of the agreements.

c. Interacts with various SSA components, HHS, other Federal agencies and governments of other countries on all foreign program matters, including evaluation of foreign social insurance systems for alien nonpayment purposes, benefit payment delivery and restrictions, acceptability of foreign evidence and program integrity.

d. Conducts legislative and regulatory reviews, studies and analysis of all matters relating to international policy and international Social Security agreements, and takes necessary legislative or regulatory action on foreign program and agreement problems requiring such remedy.

2. The International Studies and Organizations Staff (S5RJ2).

a. Develops and implements a methodology for international statistical comparisons. Develops statistical methods involving data in such fields as labor statistics, gross national product, benefit formulae and financing for a comparison of the information of these areas of interest between the United States and other nations.

b. Directs analytical studies involving comparisons of particular aspects of Social Security measures in selected groups of countries.

c. Coordinates and advises high-level agency officials, congressional committees and various firms and institutions on the operation of the Social Security systems of foreign countries. Represents the Administration and Department at international conferences and seminars on economic development and Social Security.

d. Plans and organizes the work of consultants, outside contractors and regular staff in establishing international exchanges for the purpose of creating a data bank capable of sustaining the research program.

e. Coordinates and advises high-level agency officials with regard to agency participation in international organizations active in the social policy field.

3. The International Activities Staff (S5RJ3).

a. Provides training, orientation and consultation programs on Social Security to foreign Social Security officials and experts in related field.

b. Develops and coordinates technical assistance to foreign Social Security institutions.

c. Serves as the SSA focal point in providing information about United States Social Security programs to foreign and international sources.

d. Plans and coordinates foreign travel by SSA officials.

G. The Office of Regulations (S5RB) plans, develops and writes SSA regulations and provides for the publication of regulations. Performs an ongoing assessment of the regulations process in SSA. Plans, develops and publishes various technical documents relating to the Social Security Act and programs; directs the formulation and promulgation of SSA confidentiality/disclosure policy. In coordination with SSA's OGA, negotiates with other Federal and non-Federal agencies, organizations and institutions on matters within the Office's mission.

1. The Division of Regulations (S5RB1) plans, develops and writes regulations governing Social Security programs and assesses the regulations process in SSA. Coordinates, within SSA, the review and clearance of regulations for the claims and payment processes developed for the RSDI program; the SSI program and the Black Lung Benefits programs and assures that SSA's OP has input into the regulations development process. Coordinates activities with HHS' Office of the General Counsel on the issuance of regulations. Negotiates with HHS and the Office of the Federal Register on regulations matters and other areas of concern to this Office.

2. The Division of Technical Documents and Privacy (S5RB2) plans

and develops rulings to provide interpretations and applications of the Social Security Act. Develops and publishes general and special compilations of Social Security laws, various technical issuances and program handbooks. Develops and promulgates program policy dealing with the confidentiality/disclosure of SSA records; reviews SSA's activities to assure compliance with the Privacy Act and related laws and regulations. Evaluates policies to determine whether training is needed to assure their effective implementation, and partcipates in the development of training materials.

H. The Office of Directives Management (S5RG) directs the review, coordination, publication and distribution of program instructions and other materials to insure uniformity, lack of duplication and compatability of all SSA operational, instructional and informational material; participates in determining the instructional needs of SSA operating personnel. Directs technical review of program operating instruction to insure proper integration, organization, clearance and audience for materials prepared by various SSA components for the Program Operations Manual System (POMS). Coordinates publication, distribution and warehousing of all program instructional and related materials, and directs a quality review of new issuances to insure proper reproduction of printed materials. Indexes all program instructional materials and determines user needs in this area. Provides direction for notice content and design throughout SSA. Participates with SSA's Systems organizations in the design, development and ongoing administration of a computerized system for storing, updating, publishing and distributing operational instructions and materials; coordinates with SSA's OHRTMA, as appropriate. Establishes policies and guidelines for the distribution, required by the FOIA, of SSA program publications for the public.

1. The Division of Policy, Planning, Analysis and Review (S5RG1) identifies major problems with SSA's program instructions system and researches, analyzes, develops and recommends solutions. Conducts comprehensive planning, market surveys and analyses to determine how current and emerging technologies can be utilized to improve SSA's current and projected program instructions needs and operational environment. Implements, monitors and maintains agencywide writing standards for the content and format of POMS. Designs, establishes and implements nationwide standards, policies and procedures governing the management, development, presentation, publication and distribution of SSA's nationwide program instructions system. The division reviews all SSA requests for approval to publish SSA program instructions and prepares recommendations for approval/disapproval for the Director, ODM.

The division conducts a technical review of all SSA program operating instructions, program circulars, forms and teletypes. Authorizing components are advised on the technical accuracy of each issuance in accordance with established standards and guidelines. These include proper placement, vehicle, organization, format, clearance, clarity, consistency and effectiveness. Operating instructions are reviewed at the preliminary, intercomponent and final stages of development. Regional and processing center program issuances are reviewed and monitored.

2. The Division of Publications and Systems Management (S5RG2) prepares for publishing, distributing and warehousing all SSA program instructions. Conducts an ongoing program of devleopment, maintenance and appraisal of publications operations and procedures for SSA program instructions to insure timely printing and delivery of a good quality instruction. Develops specifications for and manages electronic publication systems. Analyzes content of program directives to determine indexing terminology and references, and synthesizes all indexing activities for index integrity, thesaurus control, and publication of a topical index. Manages all activities within the Office of Directives Management (ODM) dealing with the planning, analysis, design, implementation and maintenance of computer-based office systems, integrated automated information systems, full-text retrieval data bases, automated text processing and electronic publishing. Administers SSA's electronic data base of program policy and directives.

3. The Notice Policy Staff (S5RG3) serves as the focal point for SSA's effort to improve service to the public through issuing clear notices. Designs and writes notices and selected forms. Provides direction for notice content and design throughout SSA. Acts as a clearinghouse through which program offices submit proposed new or revised notices and selected forms. Assesses the impact of new notices on public service. Oversees training for operations and programs components to improve the quality of notices.

Add the following new Subchapter:

Subchapter (S5B)

Office of Legislation and Congressional Affairs

S5B.00 Mission
S5B.10 Organization
S5B.20 Functions

Section (S5B.00) *The Office of Legislation and Congressional Affairs*—(Mission):

The Office of Legislation and Congressional Affairs develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA; analyzes legislative and regulatory initiatives, and develops specific requirements and decisions. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs, and analyzes and develops recommendations on related income maintenance, social service and rehabilitation program proposals, particularly those which may involve coordination with SSA-administered program, and on other methods of providing economic security. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting service to officals within the Executive Branch, congressional committees, individual members of Congress and private organizations interested in Social Security legislation. It establishes and maintains a working relationship with all members of Congress.

Section (S5B.10) *The Office of Legislation and Congressional Affairs*—(Organization):

The Office of Legislation and Congressional Affairs, under the leadership of the Associate Commissioner for Legislation and Congressional Affairs, includes:

A. The Associate Commissioner for Legislation and Congressional Affairs (S5B).

B. The Deputy Associate Commissioner for Legislation and Congressional Affairs (S5B).

C. The Immediate Office of the Associate Commissioner for Legislation and Congressional Affairs (S5B).

D. The Legislative Reference Staff (S5BA).

E. The Congressional Relations Staff (S5BB).

F. The Division of Disability and Supplemental Security Income (S5BC).

G. The Division of Retirement and Survivors Benefits (S5BE).

H. The Office of Policy Development (S5BG).

Section (S5B.20) *The Office of Legislation and Congressional Affairs*—(Functions):

A. The Associate Commissioner for Legislation and Congressional Affairs (S5B) is directly responsible to DCPEA, for carrying out the Office of Legislation and Congressional Affairs (OLCA) mission and providing general supervision to the major components of OLCA.

B. The Deputy Associate Commissioner for Legislation and Congressional Affairs assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Legislation and Congressional Affairs provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. The Legislative Reference Staff (S5BA).

1. Tracks legislative bills, highlights items of interest from the Congressional Record and other publications for OLCA and SSA's Executive Staff, and provides support for other OLCA and SSA components at congressional hearings.

2. Assists individual members of Congress and their staffs and congressional committee staffs by responding to requests for information on pending and proposed Social Security legislation, related legislative proposals and the legislative history of the Social Security program.

3. Reviews legislative proposals for consistency with existing program goals, philosophy and program requirements.

E. The Congressional Relations Staff (S5BB).

1. Develops and preserves working relationships with members of Congress covering the full range of program and administrative matters.

2. Serves as consultant to the Associate Commissioner, OLCA with regard to establishing and maintaining effective congressional relationships.

3. Maintains productive relationships with all members on behalf of the Agency. Conducts dialogue on a routine basis, and participates in negotiations on highly sensitive matters with members.

F. The Division of Disability and Supplemental Security Income (S5BC).

1. Develops and explains Disability Insurance (DI) and SSI programs, principles and philosophy.

2. Studies the SSI program interrelationships with Social Security Income maintenance, child support enforcement, food stamps, employment and other Federal, State and local programs, and recommends methods for coordinating these programs.

3. Reviews proposed regulations dealing with the DI program and the SSI program for the aged, blind and disabled, to assure consistency with policy requirements and decisions.

4. Develops and evaluates legislative proposals for changes in the DI and SSI programs, the SSA hearings and appeals process and the process for approving attorney fees under the programs.

5. Provides technical and advisory services to other agencies within the Executive Branch, congressional committees and individual members of Congress, State officials and private organizations having an interest in the DI and SSI programs, the SSA hearings and appeals process and the process for approving attorney fees under the programs.

G. The Division of Retirement and Survivors Benefits (S5BE).

1. Develops and explains program principles and philosophy.

2. Develops and evaluates legislative proposals for changes in the areas of retirement and survivors benefits and coverage.

3. Conducts studies of broad programmatic issues, including the philosophy, tax rates, alternative methods of financiing trust fund operations, and management and eligibility requirements for dependents and survivors' benefits, the level of Social Security benefits, value of benefits in relation to contributions, benefits computation methods, which dependents should receive benefits and the establishment of priority among these dependents.

4. Recommends methods for coordinating the protection afforded under Social Security with that afforded under other public and private benefit programs.

5. Reviews proposed regulations dealing with Retirement and Survivors Insurance (RSI), Social Security coverage, interprogram relationships and various other issues including the Social Security Retirement Test, insured status and the definitions of employment and wages, to assure cross-program consistency with policy requirements and decisions.

6. Provides technical and advisory service to other agencies within the Executive Branch, congressional committees and individual members of Congress, State officials and private organizations having an interest in RSI, Social Security coverage or interprogram relationships.

H. The Office of Policy Development (S5BG) represents the policy views and goals of the Executive Staff. Provides advice and assistance to DCPEA in the development of basic policy consistent with the objectives and goals of the Administration. Formulates agency policy philosophy and goals covering major aspects of the program, both short and long term. Insures that formulated philosophy and goals are incorporated into agency legislative and policy activities.

Dated: August 24, 1988.

Otis R. Bowen,

Secretary.

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Centers for Disease Control

Breast Cancer Tracking and Surveillance Project; Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for a Cooperative Agreement to establish a 4-year breast cancer screening and tracking program with the State of Colorado Department of Health. Assistance will be provided only to the State of Colorado Department of Health in support of this project. No other applications are solicited or will be accepted.

Authority

This program is authorized under section 317 of the Public Health Service Act. The Catalog of Federal Domestic Assistance Number is 13.283.

Background

Breast cancer represents a serious public health problem in the Denver area. There were 2,287 new invasive breast cancers diagnosed in the Denver 5-county area between 1982–84, representing a 13 percent increase over the previous 3-year period. This increase in the number of new cases is greater than the increase observed nationally. The age-adjusted incidence rate is 1 percent higher than that observed in National Center Institute Surveillance Epidemiology and End Results program data for the same period. Black women actually have a higher lifetime risk than white women (1 in 10.5 vs. 1 in 11.4), and these cumulative risks represent a significant increase over the previous decade for both black and white women. Although the risk of breast cancer does not appear to be as great

among Hispanic women (1 in 21), that risk has also increased since the previous decade. Data also confirm that survival is much poorer among women from poor neighborhoods. It is estimated that the annual cost for providing mammography for medically indigent women (representing 12 percent of the 549,800 women in Colorado over age 40) would be $4.1 million, at an average price of $75 per mammogram. No data are available on the proportion of women in Colorado who have had a mammogram, or had one within the previous year, but it can be assumed that this screening technique is underutilized as is the case nationally.

Purpose and Cooperative Activities

The purpose of this program is to provide support to the Department of Health, State of Colorado, in response to an unsolicited application for assistance to establish a tracking and surveillance component for their planned comprehensive breast cancer control program. The State has requested funds from CDC to support the design and implementation of the client tracking and surveillance system. The Colorado Department of Health is proposing to monitor both screening and diagnostic protocols. In addition to providing centralized computerized tracking of all women screened at one of the State designated sites, they also propose to mail reminders to women 30 days before the first or second yearly anniversary of their last mammogram, as is appropriate according to certain screening guidelines. After several years this tracking and followup system will be available for purchase from Colorado by providers, hospitals, and mammography centers on a subscription basis, thus providing providers and women in Colorado with a major component of a permanent, self-sustaining breast cancer control program.

A. Recipient activities will include:

1. Design and implement a computerized client tracking and follow up system that initiates annual/bi-annual reminders to women about the need for scheduling their mammograms.

2. Utilize a tracking system to monitor diagnostic protocols and through linkage with the Colorado Cancer Registry, evaluate the efficacy of recommended screening and therapeutic protocols.

3. Pilot a system that will provide annual/bi-annual reminders to women about the need for scheduling their mammogram.

4. Increase medical provider endorsement and appropriate referral for screening mammography.

B. Centers for Disease Control will:

1. Provide consultation in computer software design for the development of a computerized tracking and followup system.

2. Provide consultation in analysis of existing epidemiologic data on breast cancer in the State.

3. Provide consultation in analysis of data on availability and utilization of mammography.

4. Provide consultation and assistance in the evaluation of a State-wide computerized tracking/surveillance system for breast cancer screening.

Review Criteria

The application will be reviewed according to the following criteria:

A. The extent of the applicant's understanding of the requirements, problems, objectives, complexities, and interactions required of this cooperative agreement.

B. The quality of implementation plan for project, including a time schedule.

C. The ability to provide knowledge and resources to perform this project and the quality of proposed approach in carrying out the responsibilities.

D. The qualifications and time allocations of the existing staff and staff to be assigned to this project, quality of facilities, office space, necessary equipment, and support staff resources available for the performance of this project.

E. Describe plans to publish results and designate responsibilities for scientific publications and authors, summary documents, new releases, etc.

Other Requirements

Applications are not subject to review as governed by Executive Order 12372 "Intergovernmental Review of Federal Programs."

The Reasons for Proposing the State of Colorado Department of Health as the Recipient of this Program

The Colorado Department of Health has requested funds through an unsolicited proposal to support one component of their State-wide breast cancer control program. The State of Colorado has designed an innovative project that integrates service delivery to high risk groups with computer technology to prevent breast cancer mortality. The proposal is unique in that it positions the Colorado Department of Health for leadership in the design and implementation of a computerized tracking system for mammography that services both the public and private sectors, and if successful, will provide a model that can be used by other States. Moreover, the project will target high-risk women, aged 45 and older, who are medically indigent and cannot afford a mammogram.

It is proposed that this assistance for a tracking and surveillance program be negotiated with the State of Colorado Department of Health for the following reasons:

A. The Colorado Department of Health initiated this program, and with the exception of the tracking and surveillance component, will be entirely supported by the State.

B. The program is statewide and will target high-risk women aged 45 and older who are medically indigent and cannot afford a mammogram.

C. The proposal is unique in that it positions the Colorado Department of Health for leadership in the design and implementation of a computerized tracking system that will provide a model that can be used by other States.

D. The State has demonstrated initiative in this area in establishing the Colorado Breast Cancer Control Commission in 1984 and the Department of Health has established the Breast Cancer Control Advisory Committee consisting of the following subcommittees:

(1) Medical/Technical Subcommittee;

(2) Program Policy/Management Issues Subcommittee;

(3) Marketing/Public Information Subcommittee;

(4) Mammography Quality Control Subcommittee.

E. This program is designed to reduce mortality and morbidity from breast cancer by screening 25 percent of the State's female population age 45 and older within 5 years.

F. This project will increase the proportion of women who follow a lifetime program of breast care by providing education, financial assistance, tracking, and followup. Ultimately this program will develop a permanent, self-sustaining breast cancer control program.

Reporting Requirements

The recipient of this assistance award will submit quarterly and annual summary progress reports providing details of accomplishments.

Financial status reports must be filed no later than 90 days after the end of each budget period. Final Financial Status and Progress Reports are required at the end of the project period.

Availability of Funds

It is expected that approximately $148,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. The cooperative agreement will begin on or about September 29, 1988, and

depending upon the availability of funds, the project will be funded for a 12-month budget period within a 4-year project period with approximately $123,465, $103,792, and $72,708 for years 2, 3, and 4 respectively. Funding for the second and subsequent years is subject to the availability of funds and progress of the applicant in meeting the objectives of the cooperative agreement.

Information

Information regarding the business aspects of this project may be obtained from Terry C. Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Information regarding the technical aspects of this project may be obtained from Robert A. Smith, Ph.D., Division of Chronic Disease Control, Center for Environmental Health and Injury Control, at (404) 488-4390 or FTS 236-4390.

Dated: August 26, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88-19892 Filed 8-31-88; 8:45 am]

BILLING CODE 4160-18-M

Change in Meeting; Subcommittee on Health Care; National Committee on Vital and Health Statistics

ACTION: Notice of change in National Committee on Vital and Health Statistics Subcommittee on Health Care Statistics meeting.

Federal Register Citation of Previous Announcement: 53 FR 30871.

Previously Announced Date and Time of the Meeting:

9:00 a.m.-5:00 p.m.—September 14, 1988
9:00 a.m.-1:00 p.m.—September 14, 1988

Change in the Meeting: The Subcommittee will meet on September 15, 1988, 9:00 a.m.-5:00 p.m. only. It will not meet on September 14.

Dated: August 29, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 88-19984 Filed 8-31-88; 8:45 am]

BILLING CODE 4169-18-M

Food and Drug Administration

[Docket No. 88N-0309]

Drug Export; PTS Cough Syrup

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pennwalt Corp., has filed an application requesting approval for the export of the human drug PTS Cough Syrup to Japan.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Pennwalt Corp., Pharmaceutical Division, Jefferson Rd., Rochester, NY 14623, has filed an application requesting approval for the export of the human drug PTS Cough Syrup, to Japan. This product is to be used for cough relief. The application was received and filed in the Center for Drug Evaluation and Research on August 22, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 12, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 381)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 25, 1988.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-19914 Filed 8-31-88; 8:45 a.m.]

BILLING CODE 4160-01-M

Office of Human Development Services

[Program Announcement No. ACYF-HS 13.600-88-2]

Administration for Children, Youth and Families Head Start Bureau

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (HHS).

ACTION: Announcement of financial assistance to expand enrollment in current Head Start projects.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth, and Families announces that competing applications will be accepted to expand enrollment in current Head Start projects.

DATE: The closing date for receipt of applications is November 15, 1988. Address Applications to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, Room 341F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Doug Klafehn (202) 755-0590

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Scope of This Program Announcement

This announcement solicits applications from current Head Start grantees that wish to compete for up to $10,000,000 in grants that are available for Head Start expansion. It is expected that this expansion effort will result in an additional 3,850 children being served in Head Start programs.

This year, special emphasis will be placed on encouraging new, expanded, or improved cooperation with other child care or social service providers in the community and on reaching out to those children and families that have especially compelling needs for Head Start.

B. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 450,000 children through a network of 1,300 grantees.

While Head Start is targeted primarily on children whose families have incomes at or below the poverty line or are eligible for public assistance, OHDS' policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low income criteria. The Head Start statute also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-handicapped peers, and to receive needed special education and related services.

C. Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C. 9831 *et seq.*

The relevant regulations are:

- 45 CFR Part 1301, Head Start grants administration.
- 45 CFR Part 1302, Policies and procedures for selection, initial funding, and refunding of Head Start grantees, and for selection of replacement grantees.
- 45 CFR Part 1303, Procedures for appeals for Head Start delegate agencies, and for opportunities to show cause and hearings for Head Start grantees.
- 45 CFR Part 1304, Program performance standards for operation of Head Start programs by grantees and delegate agencies.
- 45 CFR Part 1305, Eligibility requirements and limitations for enrollment in Head Start.
- 45 CFR Part 74, Administration of grants.

D. Available Funds

Pending the availability of funds, Head Start plans to make available up to $10,000,000 to expand Head Start enrollment. ACYF expects to award all of these funds to successful applicants responding to this announcement. The estimated amount of funds available to each State for expansion is included in Appendix A. In those States which have at least $50,000 earmarked for expansion (sufficient monies to permit the funding of at least one additional classroom), applicants will compete against other applicants from the same State. In States where there is less than $50,000 available for expansion, all available funds have been pooled and applicants from these States will compete against each other.

E. Eligible Applicants

Only current Head Start grantees can apply for funding under this announcement. Delegate agencies are not eligible.

Part II. Specific Responsibilities

A. Responsibilities of the Head Start Grantees

In carrying out the proposed expansion of Head Start services under this announcement, grantees who are funded will be expected to:

1. Select appropriate areas for recruitment of new enrollees which will assure the provisions of service to those families and children who have the most serious needs for Head Start services. Recruitment areas may be either areas that are currently unserved or areas that are partially served but need additional services.

2. Give priority to serving three to five year old children for whom public school or pre-kindergarten comprehensive developmental services are not available. For example, it is not expected that applicants would propose serving five-year-old children in communities where kindergarten is available for these children.

3. For applications proposing a center-based program, provide a minimum of three and one-half hours of service per day, 4 or 5 days per week, for 128 days per year, during a minimum of 32 weeks of operation. These minimum days of operation are exclusive of holidays and vacations.

For applications proposing a home-based option, provide a minimum of one 90 minute home visit each week and two three and one-half hour socialization experiences each month during a minimum of 32 weeks of operation.

4. Provide for the involvement of parents and other community members and organizations in the development and planning of the application.

5. Implement the increase in enrollment in a timely and efficient manner. This would include such things as the availability of classroom space which meets all licensing requirements, the ability to provide adequate transportation, the ability to recruit eligible children and families, and the applicant's current ability to assure full enrollment in its program.

6. Hire classroom teachers who have received appropriate training or have experience in early childhood education, and provide opportunities for employment of residents from the service area.

7. Propose reasonable start-up costs and provide quality ongoing services at a reasonable cost.

B. Recipient Share of the Project

Section 640(b) of the Head Start Act requires that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal government. The non-Federal share may be in cash or in-kind, fairly evaluated, including facilities, equipment, or volunteer services.

Part III. Criteria for Review and Evaluation of the Grant Application

In considering how the grantee will carry out the responsibilities addressed under Part II of this announcement, competing application for financial assistance will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance (25 points)

The extent to which the applicant demonstrates the need for this assistance, stating the objectives of the program the applicant intends to operate. In explaining the need for assistance, the applicant must explain why the group of children and families proposed for expansion were chosen in

preference to other eligible children and families in the grantee's service area.

It is expected that in choosing which children and families to serve, the applicant will give preference to enrolling those children and families most in need of a Head Start experience. It is also expected that the applicant will not propose to serve children who could be served by the public school system. The applicant may include supporting documentation or testimonies from other concerned community organizations. Applicants must demonstrate that the proposed program is consistent with the needs of the participants and the community proposed to be served.

B. Results or Benefits Expected (25 points)

In response to the community needs identified above, applicants should indicate how the participants and the community will benefit from the services provided. All proposed programs must be consistent with Head Start goals and the required performance standards for local Head Start programs.

If appropriate, applicants should also explain the beneficial impact the proposed expansion would have on the current Head Start program. This could, for example, include benefits that will flow to current Head Start enrollees from working more closely with other service providers or improvements in overall program efficiency and management, such as better or more efficient use of current staff, that would result from an increase in enrollment.

C Approach (25 points)

In accordance with applicable performance standards and ACYF policies, the applicant should outline a plan of action pertaining to the increased number of children to be served and the scope and detail of how the proposed program will be implemented. Applicants are expected to show what type of cooperative arrangements have been made with other public or private agencies which will assist the applicant in providing quality Head Start services. This may include, but is not limited, to, the securing of funds from non-ACYF sources to permit programs to either serve additional children or to better serve those additional children funded by ACYF. Applicants could, for example, propose to provide a part day program to Head Start children and families using ACYF funds and to extend the part day program to accomodate working parents using funds provided by non-ACYF sources.

Applicants should cite factors which might accelerate or decelerate implementation and discuss the reasons for proposing one Head Start program option as opposed to others. Applicants should describe any unusual features of the project and also should address parent and community participation.

D. Geographic Location (15 points)

Applicants should explain why the proposed service area has been chosen as opposed to other areas within the grantee's service area. This should include demographic information on the socio-economic conditions of the residents of the proposed service area. Applicants should include a map of their service area and indicate on the map the location of the grantee, delegate agencies, and all centers, both current and proposed.

E. Budget Appropriateness and Reasonableness (10 points)

Applicants should demonstrate that the project's costs are reasonable in view of the anticipated results and in comparison to the applicant's current costs. Reasonableness will be judged, in part, on the extent to which the applicant is able to secure other resources in the community which will help support the proposed expansion in enrollment.

Part IV. The Application Process

A. Availability of Forms

Head Start grantees interested in applying for funds may request application kits from Doug Klafehn, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, ((202) 755–0590).

In order to be considered for a Head Start grant, an application must be submitted on Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0006.

Each application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions contained in the application kit.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Head Start Expansion, Office of Human Development Services, Grants and Contracts Management Division, Room 341F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. The program announcement number (ACYF–HS 13600–88–2) must be clearly identified on the application.

C. Application Consideration

Applicants will be scored against the evaluation criteria outlined in Section III. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about the Head Start program and early childhood education and development, including parents of Head Start children, Federal staff, and other experts, such as university staff or staff of child development projects.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACYF regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on relative need, applicant ranking, and funds available.

The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective Head Start services to additional children. For example, this might apply to an applicant which has had large, chronic balances of unobligated funds due to poor management, or one that has failed to serve children in agreed upon numbers. Also, the Commissioner may decide not to fund projects which would require unreasonably large initial start-up costs for facilities or equipment. In addition, ACYF will assess the quality of programs recommended for increased funding, using information from the Program Information Report, on-site reviews, cost study, etc., prior to making final funding decision. Programs experiencing problems in providing quality services may not be chosen to receive expansion funding.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

D. Closing Date for Receipt of Applications

The closing date for the receipt of applications is November 15, 1988.

1. *Mailed Applications.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the HDS Grants and Contracts Management Office, or

b. Sent on or before the deadline date, and received by the granting agency in time for them to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Grants and Contracts Management Office during the normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

3. *Late Applications.* Applications which do not meet one of these criteria are considered as late applications and will not be considered in this competition.

4. *Extension of deadline.* The Head Start Bureau may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval and reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under OMB Control Number 0980–0016.

F. Executive Order 12372—Notification Process

This program is covered under Excutive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Minnesota, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs).

Applicants from these areas need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as nearly as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

SPOCs have 60 days from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on January 17, 1989, to allow time for HDS to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independent Avenue SW., Room 341F, Hubert H. Humphrey Building, Washington, DC 20201. HDS will notify the State of any applications received which has no indication that the State process has had an opportunity for review.

A list of single points of contact for each State and territory is included at Appendix B at the end of this announcement.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: August 12, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: August 24, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Appendix A

State Allocations

I. Estimated funding levels for those States having at least $50,000 for expansion:

Alabama	$56,000
Arkansas	137,000
California	1,496,000
Connecticut	56,000
Delaware	51,000
Florida	572,000
Georgia	190,000
Illinois	326,000
Indiana	229,000
Iowa	129,000
Kentucky	101,000
Louisiana	341,000
Maine	61,000
Maryland	277,000
Michigan	223,000
Missouri	200,000
New Jersey	237,000
New York	446,000
N. Carolina	289,000
Ohio	318,000
Oregon	73,000
Pennsylvania	187,000
Puerto Rico	915,000
Rhode Island	57,000
S. Carolina	309,000
Tennessee	260,000
Texas	162,000
Washington	199,000
W. Virginia	64,000
Wisconsin	100,000
Indians	765,000
Migrants	621,000

II. States having less than $50,000:

Alaska, Arizona, Colorado, District of Columbia, Idaho, Kansas, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Outer Pacific, South Dakota, Utah, Vermont, Virginia, Virgin Islands, Wyoming.

Applicants in these States may compete for some portion of the "pooled funds" available. The total funding for these States is $403,000.

III. Administrator's Reserve:

A reserve of $150,000 will be used to supplement the funds available in those States where funds would not permit enrollment increases that were programmatically sound (e.g. 17 children per class).

Appendix B

State Single Point of Contract Address list

ALABAMA
Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939 Tel. (205) 284–8905

ALASKA
None

ARIZONA
Department of Commerce, State of Arizona.

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007. Tel. (602) 255–5004.

ARKANSAS
Joe Gillesbie Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203 Tel. (501) 371–1074

CALIFORNIA
Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814 Tel. (916) 323–7480

COLORADO
State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203. Tel. (303) 866–2156

CONNECTICUT
Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459. Tel. (203) 566–3410.

DELAWARE
Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth. Tel. (302) 736–4204

FLORIDA
Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301. Tel. (904) 488–8114

GEORGIA
Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW—Room 608, Atlanta, Georgia 30334. Tel. (404) 656–3855

HAWAII
Roger A. Ulveling, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804
For Information Contact: Hawaii State Clearinghouse. Tel. (808) 548–3016 or 548–3085

IDAHO
None

ILLINOIS
Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706. Tel. (217) 782–8639

INDIANA
Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204. Tel. (317) 232–5604

IOWA
A. Thomas Wallace, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue. Tel. (515) 281–3864

KANSAS
Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Room 152-E, State Capitol Building, Topeka, Kansas 66612. Tel. (913) 296–2436

KENTUCKY
Bob Leonard, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Tel. (502) 564–2382.

LOUISIANA
Colby S. La Place, Assistant Secretary, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804. Tel. (504) 342–9790

MAINE
State Planning Office, Attn: Intergovernmental Review Process/ Hal Kimbal, State House Station #38, Augusta, Maine 04333. Tel. (207) 289–3154

MARYLAND
Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365. Tel. (301) 225–4490

MASSACHUSETTS
Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202. Tel. (617) 727–3253

MICHIGAN
Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909. Tel. (517) 373–3530
Staff Contact: Don Bailey. Tel. (517) 334–6190

MINNESOTA
None

MISSISSIPPI
Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202
For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy. Tel. (601) 359–3150

MISSOURI
Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 760, Truman Building, Jefferson City, Missouri 65102. Tel. (314) 751–4834

MONTANA
Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620. Tel. (406) 444–5522

NEBRASKA
None

NEVADA
Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710. Tel. (702) 885–4420

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator. Tel. (702) 885–4420.

NEW HAMPSHIRE
David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301. Tel. (603) 271–2155

NEW JERSEY
Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803 Tel. (609) 292–6613

Note: Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803. Tel. (609) 292–9025.

NEW MEXICO
Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503. Tel. (505) 827–3885

NEW YORK
Director of the Budget, New York State

Note: Correspondence & questions concerning the State's E.O. 12372 process should be directed to: Harold W. Juhre Jr., New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224. Tel. (518) 474–1605.

NORTH CAROLINA
Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611. Tel. (919) 733–4131

NORTH DAKOTA
Bill Robinson, Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505. Tel. (701) 224–2094

OHIO
State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215
For Information Contact: Mr. Leonard E. Roberts, Deputy Director. Tel. (614) 466–0699

OKLAHOMA
Don Strain, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116. Tel. (405) 843–9770

OREGON
Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street NE., Salem, Oregon 97310. Tel. (503) 373–1998

PENNSYLVANIA
Laine A. Helterbridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108. Tel. (717) 783–3700

RHODE ISLAND
Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907. Tel. (401) 277–2656

Note: Questions & correspondence concerning this State's review process should be directed to: Mr. Michael T. Marfeo, Review Coordinator.

SOUTH CAROLINA
Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201. Tel. (803) 734–0435

SOUTH DAKOTA
Sue Korte, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501. Tel. (605) 773–3661

TENNESSEE
Charles Brown, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219. Tel. (615) 741–1676

TEXAS
Leon Willhite, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711

Note: Questions concerning this State's review process should be directed to: Intergovernmental Relations Division. Tel. (512) 463–1814.

UTAH
Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114. Tel. (801) 533–5245

VERMONT
State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602. Tel. (802) 828–3326.

VIRGINIA
Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219. Tel. (804) 786–4474

WASHINGTON
Washington Department of Community Development. ATTN: Washington Intergovernmental Review process, Dori Goodrich, Coordinator, Ninth and Columbia Building, Olympia, Washington 98504–4151. Tel. (206) 586–1240

WEST VIRGINIA
Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305. Tel. (304) 348–4010

WISCONSIN
Secretary James R. Krauser, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864. Tel. (608) 266–1741

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864. Tel. (608) 266–8349.

WYOMING
Ann Redman, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002. Tel. (707) 777–7574

VIRGIN ISLANDS
Toya Andrew, Federal Programs Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801. Tel. (809) 774–6517

DISTRICT OF COLUMBIA
Lovetta Davis, D.C. State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004. Tel. (202) 727–9111

PUERTO RICO
Ms. Patricia G. Custodio, P.E., Chairman and Isael Soto Marrero, Director, Federal Proposal Review Office, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985. Tel. (809) 727–4444

NORTHERN MARIANA ISLANDS
Planning and Budget Office, Office of the Governor, Saipan, CM 97950

AMERICAN SAMOA
None

GUAM
Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

[FR Doc. 88–19891 Filed 8–31–88; 8:45 am]
BILLING CODE 4130-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, October 24–25, 1988, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. on October 24 to adjournment on October 25. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Eugene R. Passamani, M.D., Director, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 416, Federal Building, Bethesda, Maryland 20892, (301) 496–2553, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 23, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19868 Filed 8–31–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–730503

Applicant: San Diego Zoo—Center for Reproduction of Endangered Species, San Diego, CA

The applicant requests a permit to import cell lines taken from wild black rhinoceroses (*Diceros bicornis*) in South Africa. The cell lines have already been taken and established at the University of Cape Town, Department of Chemical Pathology. They are to be imported for the purpose of genetic research to enhance propagation and aide in future management of the species in the wild in captivity.

PRT–730495

Applicant: David F. Bilbie, Ann Arbor, MI

The applicant requests a permit to purchase one pair of captive-hatched Hawaiian (=nene) geese (*Nesochen (=Branta) sandvicensis*) from Mike Lubbock, Sylvan Heights Waterfowl, Sylva, North Carolina, for the purpose of enhancement of propagation.

PRT–730498

Applicant: McRoberts Game Farm, Inc., Gurley, NE

The applicant requests a permit to import one captive-born female Prezewalski's horse (*Equus przesalskii*) from Polar Park, Alberta, Canada, for the purpose of enhancement of propagation.

PRT–730509

Applicant: Sedgewick County Zoo, Wichita, KS

The applicant requests a permit to purchase in interstate commerce one wild-caught male Darwin's rhea (*Pterocnemia pannata*), imported by International Animal Exchange, Ferndale, Michigan, for the purpose of enhancement of propagation.

PRT–730563

Applicant: New York University Medical Center, LEMSIP, Tuxedo, NY

The applicant requests a permit to export or reexport 2 males and 1 female captive white handed gibbons (*Hylobates lar*) of unknown origin to Tiergarten Heidelberg, Heidelberg, West Germany for the purpose of exhibit and propagation.

PRT–730601

Applicant: Gerald Persinger, Grand Island, NB

The applicant requests a permit to purchase in interstate commerce 3 male and 2 female captive-born Hawaiian geese (*Nesochen (=Branta) sandvicensis*) from Rex Lamb, Carrolton, Missouri for propagation.

PRT–730558

Applicant: Richard Eberle, Stillwater, OK

The applicant requests a permit to import serum samples taken from captive gorillas (*Gorilla gorilla*), Orangutans (*Pongo pyqmaeus*) and gibbons (*Hylobates* species) from Calgary Zoo, Calgary, Canada and Metro Toronto Zoo, Toronto, Canada for scientific research. The serum will be analysed for unknown non-human primate herpesviruses.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: August 19, 1988.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–19882 Filed 8–31–88; 8:45 am]

BILLING CODE 4310–AN–M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

August 18, 1988.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Choinumni Council, c/o Anna Alec, 2428 South Cedar Avenue, Fresno, California 93725, has filed a petition for acknowledgement by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on July 14, 1988, and was signed by members of the group's governing body.

This is notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgement and Research, Mail Stop 4627–MIB, 18th and C Streets NW., Washington, DC 20240, Phone: (202) 343–3592.

Ralph R. Reeser,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88–19899 Filed 8–31–88; 8:45 a.m.]

BILLING CODE 4310–02–M

Indian Tribes Performing Law Enforcement Functions

August 18, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of determination.

SUMMARY: Section 901(a)(3) of Title 2 of the Omnibus Crime Control and Safe

Streets Act of 1968, Pub. L. 90–351, as added by Pub. L. 96–157 and as amended by the Justice Assistance Act of 1984, Pub. L. 98–473, places responsibility on the Secretary of the Interior to determine those Indian tribes which perform law enforcement functions.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: James P. Donovan, Chief, Division of Law Enforcement Services at (202) 343–5786 (FTS: 343–5786).

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The listing below identifies all eligible Indian tribes and the specific law enforcement functions they have responsibility to exercise. Determination by the Secretary concerning Indian tribes not listed below will be made on an individual basis upon application by such tribes under provisions of the Act to the Bureau of Justice Assistance of the Department of Justice.

The following Indian tribes have been determined by the Secretary of the Interior to be performing law enforcement functions in the categories listed below.

This notice supersedes the notice published on page 13758 of the May 25, 1973, **Federal Register** (38 FR 13758) and amended on page 42392 of the December 5, 1974, **Federal Register** (39 FR 42392); page 17870 of the April 23, 1975, **Federal Register** (40 FR 17870); page 20656 of the May 12, 1975, **Federal Register** (40 FR 20656); page 22152 of the May 21, 1975, **Federal Register** (40 FR 22152); page 43932 of the September 24, 1975, **Federal Register** (40 FR 43932); page 54450 of the November 24, 1975, **Federal Register** (40 FR 54450); page 56698 of the December 4, 1975, **Federal Register** (40 FR 56698); page 27095 of the July 1, 1976, **Federal Register** (41 FR 27095); page 43924 of the October 5, 1976, **Federal Register** (41 FR 43924); page 28007 of the June 1, 1977, **Federal Register** (42 FR 28007); page 28937 of the June 6, 1977, **Federal Register** (42 FR 28937); page 36895 of the July 18, 1977, **Federal Register** (42 FR 36895); page 39479 of the August 4, 1977, **Federal Register** (42 FR 39479); page 16426 of the April 18, 1978, **Federal Register** (43 FR 16426); page 20280 of the May 11, 1978, **Federal Register** (43 FR 20280); page 57353 of the December 7, 1978, **Federal Register** (43 FR 57353); page 18563 of the March 28, 1979, **Federal Register** (44 FR 18563); page 48825 of the August 20, 1979, **Federal Register** (44 FR 48825); page 26825 of the April 21, 1980, **Federal Register** (45 FR 26825); page 26826 of the April 21, 1980, **Federal Register** (45 FR 26826); page 50424 of the July 29, 1980, **Federal Register** (45 FR 50424); and page 5–2460 of the August 7, 1980, **Federal Register** (45 FR 52460).

This notice additionally provides a list of Indian tribes who reside on Indian reservations or Indian owned lands subject to partial or full state criminal jurisdiction pursuant to Pub. L. 83–280, 18 U.S.C. section 1162, as amended by 25 U.S.C. 1321–1326, or other similar Federal legislation.

Ralph R. Reeser,

Acting Assistant Secretary—Indian Affairs.

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83–280 jurisdiction or similar legislation
ALABAMA							
Poarch Band of Creek Indians	X	X	X	X	X	X	
ARIZONA [1]							
AK Chin Community	X	X	X	X	X	X	
Cocopah Tribe	X	X	X	X	X	X	
Colorado River Tribe	X	X	X	X	X	X	
Fort McDowell Mohave-Apache	X	X	X	X	X	X	
Fort Mojave Tribe	X	X	X	X	X	X	
Gila River Pima-Maricopa	X	X	X	X	X	X	
Havasupai Tribe	X	X	X	X	X	X	
Hopi Tribe	X	X	X	X	X	X	
Hualapai Tribe	X	X	X	X	X	X	
Kaibab Paiute Band	X	X	X	X	X	X	
Navaho Tribe	X	X	X	X	X	X	
Papago Tribe	X	X	X	X	X	X	
Pascua Yaqui Tribe	X	X	X	X	X	X	
Salt River Pima-Maricopa	X	X	X	X	X	X	
San Carlos Apache Tribe	X	X	X	X	X	X	
Tonto Apache	X	X	X	X	X	X	
White Mountain Apache Tribe	X	X	X	X	X	X	
Yavapai Apache	X	X	X	X	X	X	
Yavaai-Prescott Tribe	X	X	X	X	X	X	
COLORADO							
Southern Ute Tribe [2]	X	X	X	X	X	X	X
Ute Mountain Tribe	X	X	X	X	X	X	
CONNECTICUT [3]							
Mashantucket Pequot Tribe							X
FLORIDA [4]							
Miccosukee Tribe	X	X	X	X	X	X	X
Seminole Tribe—Dania	X	X	X	X	X	X	X
Seminole Tribe—Big Cypress	X	X	X	X	X	X	X
Seminole Tribe—Brighton	X	X	X	X	X	X	X
IDAHO [5]							
Coeur D'alene Tribe	X	X	X	X	X	X	X
Duckwater Shooshone Tribe	X	X	X	X	X	X	X
Kootenai Tribe	X	X	X	X	X	X	X
Nez Perce Tribe	X	X	X	X	X	X	X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Shoshone-Bannock Tribe	X	X	X	X	X	X	X
IOWA [6]							
Sac and Fox Tribe							X
KANSAS [7]							
Kickapoo Tribe					X	X	X
Prairie Potawatomi Band					X	X	X
Sac and Fox Tribe (Kansas & Nebraska).					X	X	X
Iowa					X	X	X
LOUISIANA							
Coushatta Tribe	X	X	X	X	X	X	
Tunica-Biloxi Tribe							
Chitimacha Tribe					X	X	
MAINE [8]							
Houlton Band							X
Passamaquoddy Tribe	X	X	X	X	X	X	X
Penobscott Tribe	X	X	X	X	X	X	X
MICHIGAN							
Bay Mills Community	X	X	X	X	X	X	
Grand Traverse (Ottawa and Chippewa).	X	X	X	X	X	X	
Hannahville Community	X	X	X	X	X	X	
Keweenaw Bay Community	X	X	X	X	X	X	
Saginaw Chippewa Indian Tribe	X	X	X	X	X	X	
Sault Ste. Marie Tribe	X	X	X	X	X	X	
MINNESOTA [9]							
Lower Sioux Community		X	X		X	X	X
Bois Forte Band (Nett Lake—Minnesota Chippewa).	X	X	X	X	X	X	
Fond du Lac Band (Minnesota Chippewa).		X	X		X	X	X
Grand Portage Band (Minnesota Chippewa).		X	X		X	X	X
Leech Lake (Minnesota Chippewa)		X	X		X	X	X
Mille Lac Band (Minnesota Chippewa)		X	X		X	X	X
White Earth Band (Minnesota Chippewa).		X	X		X	X	X
Prairie Island Community		X	X		X	X	X
Red Lake Band	X	X	X	X	X	X	
Skakopee Mdewakanton Sioux Community (Prior Lake).							X
Upper Sioux Indian Community							X
MISSISSIPPI							
Mississippi Choctaw Band	X	X	X	X	X	X	
MONTANA [10]							
Backfeet Tribe	X	X	X	X	X	X	
Crowe Tribe	X	X	X	X	X	X	
Flathead (Salish and Kootenai Tribes)	X	X	X	X	X	X	X
Fort Peck (Assiniboine and Sioux Tribes).	X	X	X	X	X	X	
Fort Belknap Indian Community	X	X	X	X	X	X	
Northern Cheyenne Tribe	X	X	X	X	X	X	
Rocky Boy (Chippewa-Cree Indians)	X	X	X	X	X	X	
NEBRASKA [11]							
Iowa Tribe							
Omaha Tribe	X	X	X	X	X	X	
Sac and Fox Tribe							
Santee Sioux Tribe	X	X	X	X	X	X	X
Winnebago Tribe	X	X	X	X	X	X	
NEVADA [12]							
Duckwater Shoshone Tribe	X	X	X	X	X	X	
Ely Indian Colony	X	X	X	X	X	X	
Fallon Paiute-Shoshone Tribe	X	X	X	X	X	X	
Fort McDermitt Paiute & Shoshone Tribe.	X	X	X	X	X	X	
Fort Mojave Tribe	X	X	X	X	X	X	
Goshute Confederated Tribes	X	X	X	X	X	X	
Las Vegas Tribe of Paiute Indians	X	X	X	X	X	X	
Lovelock Paiute Tribe	X	X	X	X	X	X	
Moapa Band of Paiute Indians	X	X	X	X	X	X	
Pyramid Lake Paiute Tribe	X	X	X	X	X	X	

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Reno-Sparks Colony	X	X	X	X	X	X	
Summit Lake Paiute Tribe	X	X	X	X	X	X	
Te-Moak Bands of Western Shoshone Indians of the Battle Mountain, Elko & South Fork Colonies.	X	X	X	X	X	X	
Walker River Paiute Tribe	X	X	X	X	X	X	
Washoe Tribe	X	X	X	X	X	X	
Winnemucca Colony	X	X	X	X	X	X	
Yerington Paiute Tribe							
Yomba Shoshone Tribe	X	X	X	X	X	X	
NEW MEXICO							
Jicarilla Apache Tribe	X	X	X	X	X	X	
Mescalero Apache Tribe	X	X	X	X	X	X	
Navajo Tribe	X	X	X	X	X	X	
Pueblo of Acoma	X	X	X	X	X	X	
Pueblo of Cochiti	X	X	X	X	X	X	
Pueblo of Isleta	X	X	X	X	X	X	
Pueblo of Jemez	X	X	X	X	X	X	
Pueblo of Laguna	X	X	X	X	X	X	
Pueblo of Nambe	X	X	X	X	X	X	
Pueblo of Picuris	X	X	X	X	X	X	
Pueblo of Pojoaque	X	X	X	X	X	X	
Pueblo of San Felipe	X	X	X	X	X	X	
Pueblo of San Ildefonso	X	X	X	X	X	X	
Pueblo of San Juan	X	X	X	X	X	X	
Pueblo of Sandia	X	X	X	X	X	X	
Pueblo of Santa Ana	X	X	X	X	X	X	
Pueblo of Santa Clara	X	X	X	X	X	X	
Pueblo of Santo Domingo	X	X	X	X	X	X	
Pueblo of Taos	X	X	X	X	X	X	
Pueblo of Tesuque	X	X	X	X	X	X	
Pueblo of Zia	X	X	X	X	X	X	
Zuni Tribe	X	X	X	X	X	X	
NEW YORK [13]							
Cayuga Nation					X	X	X
Oneida Nation					X	X	X
Onondaga Nation					X	X	X
Seneca Nation	X	X	X	X	X	X	X
St. Regis Mohawk Band	X	X	X	X	X	X	X
Tonawanda Seneca Band					X	X	X
Tuscarora Nation					X	X	X
NORTH CAROLINA							
Eastern Band of Cherokees	X	X	X	X	X	X	X
NORTH DAKOTA							
Devils Lake Sioux Tribe	X	X	X	X	X	X	
Three Affiliated Tribes (Fort Berthold)	X	X	X	X	X	X	
Turtle Mountain Chippewa Band	X	X	X	X	X	X	
Standing Rock Sioux	X	X	X	X	X	X	X
OKLAHOMA							
Absentee-Shawnee Tribe	X	X	X	X	X	X	
Alabama-Quassarte Tribal Town of the Creek Nation.					X	X	
Apache Tribe of Oklahoma	X	X	X	X	X	X	
Caddo Tribe					X	X	
Cherokee Nation					X	X	
Cheyenne-Arapaho Tribe	X	X	X	X	X	X	
Chickasaw Nation					X	X	
Choctaw Nation					X	X	
Citizen Band of Potawatomi Indians	X	X	X	X	X	X	
Comanche Indian Tribe	X	X	X	X	X	X	
Creek Nation					X	X	
Delaware Tribe					X	X	
Eastern Shawee Tribe					X	X	
Fort Sill Apache Tribe					X	X	
Iowa Tribe					X	X	
Kaw Indian Tribe					X	X	
Kialegee Tribal Town of the Creek Indian Nation.					X	X	
Kickapoo Tribe					X	X	
Kiowa Tribe	X	X	X	X	X	X	
Miama Tribe					X	X	
Modoc Tribe					X	X	
Osage Tribe					X	X	
Ottawa Tribe					X	X	

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Otoe-Missouria Tribe	X	X	X	X	X	X	
Pawnee Indian Tribe	X	X	X	X	X	X	
Peoria Tribe					X	X	
Ponca Tribe					X	X	
Quapaw Tribe					X	X	
Sac and Fox Tribe	X	X	X	X	X	X	
Seminole Nation					X	X	
Seneca-Cayuga Tribe					X	X	
Thlopthlocco Tribal Town of the Creek Indian Nation.					X	X	
Tonkawa Tribe					X	X	
United Keetoowah Band of Cherokee Indians.					X	X	
Wichita Indian Tribe					X	X	
Wyandotte Tribe					X	X	
OREGON [14]							
Burns Paiute Colony	X	X	X	X	X	X	
Coos, Lower Umpqua and Siuslaw Tribes.	X	X	X	X	X	X	X
Cow Creek Band of Umpqua Indians	X	X	X	X	X	X	X
Grand Ronde Community Tribes	X	X	X	X	X	X	X
Siletz Tribes	X	X	X	X	X	X	X
Umatilla Tribes	X	X	X	X	X	X	
Warm Springs Tribes	X	X	X	X	X	X	
RHODE ISLAND [15]							
Narragansett Tribe					X	X	X
SOUTH DAKOTA							
Cheyenne River Sioux Tribe	X	X	X	X	X	X	
Crow Creek Sioux Tribe	X	X	X	X	X	X	
Flandreau Santee Sioux Tribe	X	X	X	X	X	X	
Lower Brule Sioux Tribe	X	X	X	X	X	X	
Oglala Sioux Tribe	X	X	X	X	X	X	
Rosebud Sioux Tribe	X	X	X	X	X	X	
Sisseton-Wahpeton Sioux Tribe	X	X	X	X	X	X	
Standing Rock Sioux Tribe	X	X	X	X	X	X	
Yanton Sioux Tribe	X	X	X	X	X	X	
TEXAS [16]							
Kickapoo Band					X	X	X
UTAH							
Northwestern Band of Shoshone Indians (Washakie).							
Paiute Indian Tribe							
Skull Valley Goshute Band					X	X	
Ute Tribe (Uintah and Ouray)	X	X	X	X	X	X	
WASHINGTON [17]							
Chehalis Tribes	X	X	X	X	X	X	X
Colville Tribes	X	X	X	X	X	X	X
Hoh Indian Tribe	X	X	X	X	X	X	X
Jamestown Clallam Band	X	X	X	X	X	X	X
Kalispel Indian Community	X	X	X	X	X	X	X
Lower Elwha Tribal Community	X	X	X	X	X	X	X
Lummi Tribe	X	X	X	X	X	X	X
Makah Indian Tribe	X	X	X	X	X	X	X
Muckleshoot Indian Tribe	X	X	X	X	X	X	X
Nisqually Indian Community	X	X	X	X	X	X	X
Nooksack Indian Tribe	X	X	X	X	X	X	X
Port Gamble Indian Community	X	X	X	X	X	X	X
Puyallup Tribe	X	X	X	X	X	X	X
Quileute Tribe	X	X	X	X	X	X	X
Quinault Tribe	X	X	X	X	X	X	X
Sauk-Suiattle Indian Tribe	X	X	X	X	X	X	X
Shoalwater Bay Tribe	X	X	X	X	X	X	X
Skokomish Indian Tribe	X	X	X	X	X	X	X
Spokane Tribe	X	X	X	X	X	X	X
Squaxin Island Tribe	X	X	X	X	X	X	X
Stillaquamish Tribe	X	X	X	X	X	X	X
Sauquamish Indian Tribe	X	X	X	X	X	X	X
Swinomish Indian Tribe	X	X	X	X	X	X	X
Tulalip Tribes	X	X	X	X	X	X	X
Upper Skagit Indian Tribe	X	X	X	X	X	X	X
Yakima Indian Nation	X	X	X	X	X	X	X
WISCONSIN [18]							
Bad River Band	X	X	X	X	X	X	X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Forest County Potawatomie Community.			X		X	X	X
Lac Courte Oreilles Band							X
Lac du Flambeau Band		X	X		X	X	X
Menominee Tribe	X	X	X	X	X	X	
Oneida Tribe							X
Red Cliff Band	X	X	X	X	X	X	X
Sokoagon Chippewa Community							X
St. Croix Chippewa							X
Stockbridge-Munsee Community		X	X		X	X	X
Wisconsin Winnebago Tribe							X
WYOMING							
Arapahoe Tribe (Wind River)	X	X	X	X	X	X	
Shoshone Tribe (Wind River)	X	X	X	X	X	X	
ALASKA [19]							
Akihiok, Native Village of Akihiok							X
Akiachak, Native Village of Akiachak							X
Akiak Native Community	X	X		X	X		X
Akutan, Native Village of Akutan							X
Alakanuk, Village of Alakanuk	X	X		X	X		X
Alatna Village							X
Alegnagik, Village of Alegnagik							X
Allakaket Village							X
Ambler, Village of Ambler							X
Anaktuvuk Pass, Village of Anaktuvuk Pass.	X	X		X	X		X
Angoona Community Association	X	X		X	X		X
Aniak, Village of Aniak							X
Anvik Village	X	X		X	X		X
Artic Village							X
Atka, Native Village of Atka							X
Atkasook Village							X
Atmauthluak, Village of Atmauthlauk							X
Barrow Native Village (Point Barrow)	X	X		X	X		X
Beaver Village							X
Belkofsky, Native Village of Belkofsky							X
Bethel Native Village	X	X		X	X		X
Bettles Field/Evansville Village							X
Birch Creek Village							X
Brevig Mission Village							X
Buckland, Native Village of Buckland	X	X		X	X		X
Cantwell, Native Village of Cantwell							X
Chalkyitsik Village							X
Chanega (Chenega), Native Village of Chanega.							X
Chauthbaluk, Village of Chauathbaluk							X
Chefornak, Village of Chefonak							X
Chevak Native Village							X
Chickaloon Village							X
Chignik, Native Village of Chignik							X
Chignik Lagoon, Native Village of Chignik Loon.							X
Chignik Lake Village							X
Chilkat Indian Village of Klukwan							X
Chilkoot Indian Association of Haines							X
Chistochina, Native Village of Chistochina.							X
Chitina, Native Village of Chitina							X
Circle Village							X
Clark's Point, Village of Clark's Point							X
Copper Center Village							X
Craig Community Association							X
Crooked Creek, Village of Crooked Creek.							X
Deering, Native Village of Deering							X
Dillingham, Native Village of Dillingham.							X
Diomede, Native Village of Diomede (a.k.a. Inalik).							X
Dot Lake, Village of Dot Lake							X
Douglas Indian Association							X
Eagle, Village of Eagle	X	X		X	X		X
Eek, Native Village of Eek	X	X		X	X		X
Egegik Village							X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Eklutna Native Village							X
Ekuk, Native Village of Ekuk							X
Ekwok Village							X
Elim, Native Village of Elim							X
Emmonak Village	X	X		X	X		X
Eyak Native Village							X
False Pass, Native Village of False Pass.							X
Fort Yukon, Native Village of Fort Yukon.							X
Gakona, Native Village of Gakona							X
Galena Village (a.k.a. Louden village)							X
Gambell, Native Village of Gambell	X	X		X	X		X
Golovin, Village of Golovin	X	X		X	X		X
Goodnews Bay, Native Village of Goodnews Bay.	X	X		X	X		X
Grayling, Organized Village of Grayling (a.k.a. Holikachuk).	X	X		X	X		X
Gulkana Village							X
Healy Lake Village							X
Holy Cross Village	X	X		X	X		X
Hoonah Indian Association	X	X		X	X		X
Hooper Bay, Native Village of Hooper Bay.	X	X		X	X		X
Hughes Village							X
Huslia Village	X	X		X	X		X
Hydaburg Cooperative Association							X
Igiugig Village							X
Iliamna, Village of Iliamna							X
Inupiat Community of the Artic Slope							X
Ivanoff Bay Village							X
Kake, Organized Village of Kake	X	X		X	X		X
Kaktovik Village of Barter Island (a.k.a. Barter Island.							X
Kalskag, Village of Kalskag							X
Kanatak, Native Village of Kanatak							X
Karluk, Native Village of Karluk							X
Kasaan, Native Village of Kasaan							X
Kasigluk, Native Village of Kasigluk							X
Kenaitze Indian Tribe							X
Ketchikan Indian Corporation							X
Kiana Village							X
King Cove Village							X
King Island Native Community							X
Kipnuk, Native Village of Kipnuk							X
Kivalina, Native Village of Kivalina	X	X		X	X		X
Klawock Cooperative Association	X	X		X			X
Knik Village							X
Kobuk Village							X
Kohanok Village							X
Kongiganak Native Village							X
Kotlik, Village of Kotlik	X	X		X	X		X
Kotzebue, Native Village of Kotzebue	X	X		X	X		X
Koyuk, Native Village of Koyuk	X	X		X	X		X
Koyukuk Native Village							X
Kwethluk, Organized Village of Kwethluk.							X
Kwigillingok, Native Village of Kwigillingok.							X
Kwinhagak, Native Village of Kwinhagak (a.k.a. Quinhagak).							X
Larsen Bay, Native Village of Larsen Bay.							X
Levelok Village							X
Lime Village							X
Lower Kalskag, Village of Lower Kalskag.							X
Manley Hot Springs Village							X
Manokotak Village	X	X		X	X		X
Marshall, Native Village of Marshall (a.k.a. Fortuna Ledge).							X
McGrath, Native Village of MacGrath							X
Mekoryuk, Native Village of Mekoryuk, Island of Nunivak.							X
Mentasta Village (a.k.a. Mentasta Lake).							X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Metlakatla Indian Community, Annette Islands Reserve, Alaska	X	X	X	X	X	X	X
Minto, Native Village of Minto							X
Mountain Village, Native Village of Mountain Village	X	X		X	X		X
Naknek Native Village							X
Napakiak, Native Village of Napakiak							X
Napaskiak Traditional Village	X	X		X	X		X
Nelson Lagoon, Native Village of Nelson Lagoon							X
Nenana Native Association							X
Newhalen Village	X	X		X	X		X
New Stuyahok Village							X
Newtok Village							X
Nightmute, Native Village of Nightmute							X
Nikolai Village							X
Nikoski, Native Village of Nikoski							X
Noatak, Native Village of Noatak							X
Nome Eskimo Community							X
Nondalton Village							X
Noorvik Native Community	X	X		X	X		X
Northway Village							X
Nulato Village							X
Nunapitchuk, Native Village of Nunapitchuk							X
Old Harbor, Native Village of Old Harbor							X
Oscarville, Oscarville Traditional Village							X
Ouzinkie, Native Village of Ouzinkie							X
Pedro Bay Village							X
Perryville, Native Village of Perryville							X
Petersburg Indian Association							X
Pilot Point, Native Village of pilot Point							X
Pilot Station Traditional Village							X
Pitka's Point, Native Village of Pitka's Point							X
Platinum Traditional Village							X
Point Hope, Native Village of Point Hope	X	X		X	X		X
Point Law, Native Village of Point Lay							X
Portage Creek Village							X
Port Graham Village							X
Port Heiden, Native Village of Port Heiden							X
Port Lions, Native Village of Port Lions							X
Prbilof Islands Aleut Communities of St. Paul and St. George Islands							X
Rampart Village							X
Red Devil, Village of Red Devil							X
Ruby, Native Village of Ruby							X
Russian Mission, Native Village of Russian Mission (Yukon)	X	X		X	X		X
Sand Point Village							X
Savoonga, Native Village of Savoonga							X
Saxman, Organized Village of Saxman	X	X		X	X		X
Scammon Bay, Native Village of Scammon Bay	X	X		X	X		X
Selawik, Native Village of Selawik	X	X		X	X		X
Shageluk Native Village	X	X		X	X		X
Shakoolik, Native Village of Shaktoolik	X	X		X	X		X
Sheldon's Point, Native Village of Sheldon's Point							X
Shishmaref, Native Village of Shishmaref	X	X		X	X		X
Shungnak, Native Village of Shungnak	X	X		X	X		X
Sitka Community Association							X
Sleetmute, Village of Sleetmute							X
South Naknek Village							X
Stebbins Community Association							X
Stevens, Native Village of Stevens							X
Stony River, Village of Stony River							X
St. Mary's Village (a.k.a. Algaaciq)	X	X		X	X		X
St. Michael, Native Village of St. Michael	X	X		X	X		X
Takotna Village							X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Tanacross, Native Village of Tanacross.							X
Tanana, Native Village of Tanana							X
Tatitlek, Native Village of Tatitlek							X
Tazlina, Native Village of Tazlina							X
Telida Village							X
Teller Native Village	X	X		X	X		X
Tetlin, Native Village of Tetlin							X
Togiak, Traditional Village of Togiak							X
Tlingit and Haida Indians of Alaska							X
Toksook Bay, Native Village of Toksook Bay.							X
Tuluksak Native Community							X
Tuntutuliak, Native Village of Tuntutuliak.							X
Tununak, Native Village of Tununak							X
Twin Hills Village							X
Tyonek, Native Village of Tyonek							X
Ugashik Village							X
Unalakleet, Native Village of Unalakleet.	X	X		X	X		X
Venetie, Native Village of Venetie							X
Wainwright Village	X	X		X	X		X
Wales, Native Village of Wales	X	X		X	X		X
White Mountain, Native Village of White Mountain.	X	X		X	X		X
Wrangell Cooperative Association							X
CALIFORNIA [20]							
Agua Caliente Band of Cahuilla Indians.					X	X	X
Alturas Rancheria of Pit River Indians					X	X	X
Augustine Band of Cahuilla Mission Indians.					X	X	X
Barona Captain Grande Band of Diegueno Mission Indians.				X	X	X	X
Berry Creek Rancheria of Maidu Indians.					X	X	X
Big Band Rancheria of Pit River Indians.					X	X	X
Big Lagoon Rancheria of Smith River Indians.					X	X	X
Big Pine Band of Owens Valley Paiute Shoshone Indians.					X	X	X
Big Sandy Rancheria of Mona Indians					X	X	X
Big Valley Rancheria of Pomo and Pit River Indians.					X	X	X
Blue Lake Rancheria					X	X	X
Bridgeport Paiute Colony					X	X	X
Buena Vist Rancheria of Me-Wuk Indians.					X	X	X
Cabazon Band of Cahuilla Mission Indians.					X	X	X
Cachil Deke Band of Wintum Indians					X	X	X
Cahuilla Band of Mission Indians					X	X	X
Cahto Tribe					X	X	X
Campo Band of Diegueno Mission Indians.					X	X	X
Captain Grande Band of Diegueno Mission Indians.					X	X	X
Cederville Rancheria of Northern Paiute Indians.					X	X	X
Chemehuevi Tribe					X	X	X
Cher-Ae Heights Community					X	X	X
Chicken Ranch Rancheria of Me-Wuk Indians.					X	X	X
Cloverdale Rancheria of Pomo Indians					X	X	X
Coast Community of Yurok Indians					X	X	X
Cold Springs Rancheria of Mono Indians.					X	X	X
Colorado River Tribe					X	X	X
Cortina Rancheria of Wintun Indians					X	X	X
Covelo Community					X	X	X
Coyote Valley Band of Pomo Indians					X	X	X
Cuyapaipe Community of Diegueno Mission Indians.					X	X	X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
Death Valley TIMBI-Sha Shoshone Band.					X	X	X
Dry Creek Rancheria of Pomo Indians					X	X	X
Elem Colony of Pomo Indians					X	X	X
Elk Valley Rancheria of Smith River Tolowa Indians.					X	X	X
Enterprise Rancheria of Maidu Indians					X	X	X
Fort Bidwell Community of Paiute Indians.					X	X	X
Fort Independence Community					X	X	X
Fort Mojave Tribe					X	X	X
Greenville Rancheria of Maidu Indians					X	X	X
Grindstone Rancheria of Wintun-Wailaki Indians.					X	X	X
Hoopa Valley Tribe					X	X	X
Hopland Band of Pomo Indians					X	X	X
Inaja Band of Diegueno Mission Indians.					X	X	X
Jackson Rancheria of Me-Wuk Indians					X	X	X
Jamul Village					X	X	X
Karuk Tribe					X	X	X
Kashia Band of Pomo Indians					X	X	X
La Jolla Band of Luiseno Mission Indians.					X	X	X
La Posta Band of Diegueno Mission Indians.					X	X	X
Lookout Rancheria of Pit River Indians					X	X	X
Los Coyotes Band of Cahuilla Mission Indians.					X	X	X
Manchester Band of Pomo Indians					X	X	X
Manzanita Band of Dieugueno Mission Indians.					X	X	X
Mesa Grande Band of Diegueno Mission Indians.					X	X	X
Middletown Rancheria of Pomo Indians.					X	X	X
Montgomery Creek Rancheria of Pit River Indians.					X	X	X
Mooretown Rancheria of Maidu Indians.					X	X	X
Morongo Band of Cahuilla Mission Indians.					X	X	X
Northfork Rancheria of Mono Indians					X	X	X
Paiute-Shoshone Indians of the Bishop Community.					X	X	X
Paiute-Shoshone Indians of the Long Pine Community.					X	X	X
Pala Band of Luiseno Mission Indians					X	X	X
Pauma Band of Luiseno Mission Indians.					X	X	X
Pechanga and of Luiseno Mission Indians.					X	X	X
Picayune Rancheria of Chukchansi Indians.					X	X	X
Pinoleville Rancheria of Pomo Indians					X	X	X
Pit River Tribe					X	X	X
Potter Valley Rancheria of Pomo Indians.					X	X	X
Quartz Valley Rancheria of Karok, Shasta and Upper Klamath Indians.					X	X	X
Quechan Tribe					X	X	X
Ramona Band of Cahuilla Mission Indians.					X	X	X
Redding Valley Rancheria of Pomo Indians.					X	X	X
Redwood Valley Rancheria of Pomo Indians.					X	X	X
Rincon Band of Luiseno Mission Indians.					X	X	X
Roaring Creek Rancheria of Pit River Indians.					X	X	X
Robinson Rancheria of Pomo Indians					X	X	X
Rohnerville Rancheria of Bear River Indians.					X	X	X
Rumsey Rancheria of Wintun Indians					X	X	X
San Manual Band of Serrano Mission Indians.					X	X	X

Tribal entities recognized by Federal Government by State	To employ tribal police	To establish a tribal court	To adopt a tribal law and order code	To undertake correction functions	To undertake programs aimed at preventing adult and juvenile delinquency	To undertake adult and juvenile rehabilitation programs	Reservation is subject to partial or full Public Law 83-280 jurisdiction or similar legislation
San Pasqual Band of Diegueno Mission Indians.					X	X	X
Santa Rosa Community					X	X	X
Santa Rosa Band of Cahuilla Mission Indians.					X	X	X
Santa Ynez Band of Chumash Mission Indians.					X	X	X
Santa Ysabel Band of Diegueno Mission Indians.					X	X	X
Sheep Ranch Rancheria of Me-Wuk Indians.					X	X	X
Sherwood Valley Rancheria of Pomo Indians.					X	X	X
Shingle Springs Band of Miwok Indians.					X	X	X
Smith River Rancheria					X	X	X
Soboba Band of Luiseno Mission Indians.					X	X	X
Susanville Rancheria of Paiute, Maidu, Pit River, and Washoe Indians.					X	X	X
Sycuan Band of Diegueno Mission Indians.					X	X	X
Table Bluff Rancheria of Wiyot Indians					X	X	X
Table Mountain Rancheria					X	X	X
Torres-Martinez Band of Cahuilla Mission Indians.					X	X	X
Tule River Tribe	X	X	X	X	X	X	X
Tuolumne Band of Me-Wuk Indians					X	X	X
Twenty-Nine Palms Band of Luiseno Mission Indians.					X	X	X
Upper Lake Band of Pomo Indians					X	X	X
Utu Utu Gwaiti Paiute Tribe					X	X	X
Viejas Baron Long Captain Grande Band of Diegueno Mission Indians.					X	X	X
Yurok Tribe of Hoopa Valley Reservation.					X	X	X

[1] Arizona's Pub. L. 83-280 jurisdiction is limited to enforcement of the State's air and water pollution controls. See Ariz. Rev. Stat. Ann. 36-1801, 36-1865 (1967). See also 50 FR 34555 (1985).
[2] See the Act of May 21, 1984, Pub. L. 98-290, Secs. 1-5, 98 Stat. 201, 202.
[3] See 25 U.S.C. 1751 et seq. (1983).
[4] See Fla. Stat. Ann. 285.16 (West 1975), and 25 U.S.C. 1747. But see *United States* v. *Daye*, 596 F.2d 1305 (1983).
[5] See Idaho Code 67-5101 through 67-5103 (1963).
[6] See the Act of June 30, 1948, 62 Stat. 1161.
[7] See the Act of June 25, 1948, 62 Stat. 827.
[8] See 25 U.S.C. 1721-1735 (1982), and Me. Rev. Stat. Ann. Tit. 30, Secs. 6201-6214 (1979).
[9] See 18 U.S.C. 1162 (1982), and 40 FR 4026 (1975).
[10] See Mont. Rev. Code Ann. 83-801—83-806 (1963).
[11] See 18 U.S.C. 1162 (1982), 25 U.S.C. 713F (1982), 25 U.S.C. 714e (1982), 35 FR 16598 (1970), and 51 FR 24234 (1986).
[12] See Nev. Rev. Stat. 41.430 (1973), and 40 FR 27501 (1975).
[13] See 25 U.S.C. 232 (1982).
[14] See 18 U.S.C. 1162 (1982), 25 U.S.C. 713f (1982), 25 U.S.C. 714e (1982), 25 U.S.C. 711 et seq. (1982), 44 FR 26169 (1979), and 46 FR 2195 (1981).
[15] See 25 U.S.C. 1701 et seq. (1982).
[16] See 25 U.S.C. 1300b-11 et seq. (1982).
[17] See Wash. Rev. Code 37.12.010.-37.12.070 (1963), 34 FR 14288 (1969), and 37 FR 7353 (1972).

[FR Doc. 88-19862 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[MT-920-08-4111-11; MTM 73031]

Proposed Reinstatement of Terminated Oil and Gas Lease; Montana

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease MTM 73031, Fallon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: August 26, 1988.

June A. Bailey,
Chief, Leasing Unit.

[FR Doc. 88-19901 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-920-08-4212-12; A-22796]

Exchange of Public and State Land; Arizona

August 24, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the State of Arizona. The United States transferred, 25,343.47 acres in Coconino, La Paz, Maricopa, Mohave and Yavapai Counties and accepted title on 32,359.59 acres in Yavapai and Mohave Counties.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 206 of the Federal Land Policy and Management Act, the following described public land was transferred to the State of Arizona under Patent No. 02–87–0047:

Gila and Salt River Meridian

T. 27 N., R. 9 E.,
Sec. 6, lot 11.
T. 21 N., R. 2 W.,
Sec. 6, lots 4 to 7, incl.
T. 15 N., R. 9 W.,
Sec. 16, N½N½, SE¼NE¼, SW¼NW¼;
Sec. 19, lots 3 and 4, E½SW¼ SE¼;
Sec. 20, lots 1 to 4, incl., NE¼, E½W½, SW¼SW¼;
Sec. 21, lot 1, lots 7 to 13, incl., E½;
Sec. 27, NE¼, E½NW¼, N½NW¼NW¼, N½S½NW¼NW¼, N½NE¼SW¼, N½N½SE¼;
Sec. 30, lots 1, 5 and 6, N½NE¼, NE¼NW¼.
T. 15 N., R. 8 W.,
Sec. 12, lots 4 and 5;
Sec. 13, lots 5 to 7, incl., NE¼NW¼, S½NW¼, S½;
Sec. 14, lot 2;
Sec. 22, NE¼NW¼, SW¼NW¼, W½SW¼;
Sec. 27, NE¼NW;
Sec. 33, SW¼NW¼.
T. 15 N., R. 7 W.,
Sec. 7, lots 18 to 22, incl.
T. 14½ N., R. 8 W.,
Sec. 31, NE¼.
T. 14 N., R. 9 W.,
Sec. 14, SW¼.
T. 13 N., R. 9 W.,
Sec. 10, S½;
Sec. 11, W½;
Sec. 12, N½NE¼;
Sec. 14, W½, SE¼;
Sec. 15, all;
Sec. 20, W½NW¼, N½SW¼;
Sec. 22, all;
Sec. 23, all;
Sec. 26, N½NE¼, W½;
Sec. 27, all;
Sec. 35, N½.
T. 13 N., R. 8 W.,
Sec. 7, lot 1, NE¼NW¼;
Sec. 11, NE¼NE¼;
Sec. 12, NE¼NW¼, E½SW¼;
Sec. 27, S½;
Sec. 28, S½;
Sec. 33, all;
Sec. 34, all.
T. 12 N., R. 5 W.,
Sec. 22, lots 1 and 2, SE¼NE¼.
T. 8 N., R. 7 W.,
Sec. 3, lots 1 to 4, incl., S½;
Sec. 10, N½, N½SE¼, SW¼;
Sec. 11, N½, N½S½, SE¼SE¼;
Sec. 12, all;
Sec. 13, all;
Sec. 14, NE¼NE¼, S½NE¼, S½SW¼, SE¼;
Sec. 15, W½, W½SE¼;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 34, all;
Sec. 35, all.
T. 7 N., R. 6 W.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼;
Sec. 34, NE¼, S½NW¼, S½;
Sec. 35, all.
T. 7 N., R. 5 W.,
Sec. 35, NE¼, S½.
T. 6 N., R. 13 W.,
Sec. 28, NE¼SE¼, S½SE¼.
T. 6 N., R. 12 W.,
Sec. 21, W½SW¼.
T. 6 N., R. 11 W.,
Sec. 10, all;
Sec. 17, all.
T. 5 N., R. 13 W.,
Sec. 24, lots 1 and 2, NE¼, N½NW¼, NW¼SE¼;
Sec. 25, E½NE¼NE¼ SW¼NE¼NE¼, W½NW¼NE¼NE¼.
T. 5 N., R. 12 W.,
Sec. 6, lot 2.
T. 8 S., R. 12 E.,
Sec. 32, SE¼.

The areas described aggregate 22,983.02 acres, according to the official plats of said land, on file in the Bureau of Land Management.

The folowing described public land was transferred to the State of Arizona under Deed No. AZ–87–013:

Gila and Salt River Meridian

T. 30 N., R. 2 W.,
Sec. 33, W½NE¼, SE¼NE¼, NW¼, NE¼SW¼, E½SE¼.
T. 29 N., R. 2 W.,
Sec. 3, lot 3, SW¼NE¼;
Sec. 11, SE¼SE¼.
T. 23 N., R. 14 W.,
Sec. 36, SW¼NW¼. (Surface only)
T. 18 N., R. 13 W.,
Sec. 35, E½NE¼.
T. 6 N., R. 13 W.,
Sec. 32, all. (Surface only)
T. 6 N., R. 12 W.,
Sec. 16, NW¼. (Surface only)
T. 6 N., R. 11 W.,
Sec. 6, all;
Sec. 9, SW¼NE¼. (Surface only)
T. 5 N., R. 13 W.,
Sec. 5, lots 2 to 4, incl., SW¼NE¼, S½NW¼.

Aggregating 2,360.45 acres, more or less.

In exchange the United States accepted title to the following land conveyed by the State of Arizona:

T. 14 N., R. 10 W.,
Sec. 6, lots 1 to 7 incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 23, all; (Surface only)
Sec. 24, S½; (Surface only)
Sec. 31, lots 1 to 4 incl., E½, SE½W½; (Surface only)
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 36, all.
T. 14 N., R. 9 W.,
Sec. 30, lots 1 to 4 incl., E½, E½W¼;† (Surface only)
Sec. 31, lots 1 to 4 incl., E½, E½W½; (Surface only)
Sec. 32, W½, W½SE¼.
T. 13 N., R. 9 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½; (Surface only)
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼,† SE¼; (Surface only)
Sec. 7, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 8, all; (Surface only)
Sec. 31, that portion SWly of Hwy 93.
T. 13 N., R. 10 W.,
Sec. 2, lots 1 to 5, incl., lot 7, S½N½, E½SE¼;
Sec. 16, all;
Sec. 32, all;
Sec. 33, all; (Surface only)
Sec. 34, all; (Surface only)
Sec. 35, all, (Surface only).
T. 12 N., R. 10 W.,
Sec. 3, lots 1 to 4, incl., S½;
Sec. 4, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½;
Sec. 6, lots 1 and 2, SE¼;
Sec. 10, E½; (Surface only)
Sec. 11, all; (Surface only)
Sec. 12, all; (Surface only)
Sec. 13, all; (Surface only)
Sec. 24, E½; (Surface only)
Sec. 25, E½; (Surface only on SW¼SE¼ and E½SE¼)
Sec. 34, N½, N½S½, S½SW¼, SW¼SE¼; (Surface only)
Sec. 35, all; (Surface only)
Sec. 36, NE¼, S½NW¼, S½.
T. 12 N., R. 9 W.,
Sec. 5, that portion of SW¼ SWly of Hwy 93;
Sec. 6, that portion SWly of Hwy 93;
Sec. 7, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 8, that portion SWly of Hwy 93; (Surface only)
Sec. 17, all; (Surface only)
Sec. 18, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 19, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 20, all; (Surface only)
Sec. 26, that portion of S½, NE¼, E½NW¼, SW¼NW¼ SWly of Hwy 93; (Surface only)
Sec. 29, lots 1 to 6, incl., NE¼NE¼, W½W½, SE¼SW¼, NE¼SE¼, S½SE¼; (Surface only)
Sec. 30, lots 1 to 4, incl., E½, E½W½; (Surface only)
Sec. 31, lots 1 to 4, incl., E½, E½W½; (Surface only)

Sec. 35, that portion SWly of Hwy 93; (Surface only)
Sec. 36, that portion SWly of Hwy 93.
T. 11 N., R. 10 W.,
Sec. 3, lots 1 and 2, S½NE¼; (Surface only).
T. 11 N., R. 9 W.,
Sec. 1, that portion SWly of Hwy 93; (Surface only)
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 11, all; (Surface only)
Sec. 12, all; (Surface only)
Sec. 13, NE¼, NE¼NW¼, S½NW¼, S½; (Surface only)
Sec. 14, all; (Surface only)
Sec. 23, NE¼; (Surface only)
Sec. 24, N½ (Surface only).
T. 11 N., R. 8 W.,
Sec. 6, that portion SWly of Hwy 93; (Surface only)
Sec. 7, that portion SWly of Hwy 93; (Surface only)
Sec. 8, that portion SWly of Hwy 93; (Surface only)
Sec. 16, that portion of SW¼ SWly of Hwy 93;
Sec. 17, that portion SWly of Hwy 93; (Surface only)
Sec. 18, lots 1 to 8, incl.; (Surface only)
Sec. 19, lots 1 to 4, incl.; (Surface only)
Sec. 20, N½; (Surface only)
Sec. 21, that portion of NW¼ SWly of Hwy 93.

The area comprises 32,359.59 acres, more or less.

The purpose of this Notice is to inform the public and local governmental officials of the exchange of land between the United States and the State of Arizona.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-19863 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-07-4321-01; AZA-23330]

Realty Action; Exchange of Mineral Estate; Arizona

The following described federal mineral estate has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Approximately 49,153.41 acres of public mineral estate will be exchanged for 49,133.23 acres of state of Arizona mineral estate.

Gila and Salt River Meridian, Apache County, Arizona

T. 8 N., R. 28 E.,
Sec. 1, lot 2, SW¼NE¼, S½SE¼; sec. 11, NE¼SW¼; sec. 17, S½NE¼.
T. 9 N., R. 27 E.,
Sec. 3, S½.
T. 9 N., R. 29 E.,
Sec. 17, SW¼; sec. 23, N½NE¼.
T. 9 N., R. 30 E.,
Sec. 6, NW¼SE¼.
T. 10 N., R. 25 E.,
Sec. 1, lots 1 to 3, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 10 N., R. 28 E.,
Sec. 14, W½NE¼, E½NW¼.
T. 10 N., R. 29 E.,
Sec. 7, W½E½, W½; sec. 27, S½.
T. 10 N., R. 30 E.,
Sec. 11, SE¼SW¼, SE¼; sec. 14, all; sec. 23, all; sec. 33, W½, W½E½, SE¼SE¼.
T. 11 N., R. 27 E.,
Sec. 22, NE¼, W½, N½SE¼, SW¼SE¼.
T. 11 N., R. 28 E.,
Sec. 15, S½NE¼, NW¼NW¼, S½NW¼, S½; sec. 22, NE¼, W½, N½SE¼, SW¼SE¼; sec. 31, lots 2 to 4, incl., NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 11 N., R. 31 E.,
Sec. 30, lots 1 to 4, incl., E½, E½W½.
T. 12 N., R. 28 E.,
Sec. 4, lots 1, 8, 9, 10, 15 and 16.
T. 12 N., R. 29 E.,
Sec. 24, all.
T. 12 N., R. 30 E.,
Sec. 19, lots 2 to 4, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼; sec. 20, S½N¼, S½; sec. 24, all; sec. 25, all; sec. 27, W½, SE¼.
T. 12 N., R. 31 E.,
Sec. 4, lots 1 to 16, incl., S½; sec. 5, lots 1 to 16, incl.; sec. 6, lots 1 to 16, incl.; sec. 7, lots 1 to 4, incl., E½NW¼, NE¼SW¼; sec. 8, E½E½, SE¼SW¼; sec. 9, all; sec. 17, E½NE¼, W½NW¼, S½; sec. 18, lots 1 to 4, incl., E½, E½W½; sec. 19, lots 1 to 4, incl., E½, E½W½; sec. 20, all; sec. 29, all; sec. 30, lots 1 to 4, incl., E½, E½W½; sec. 31, lots 1 to 4 incl., E½, E½W½.
T. 13 N., R. 27 E.,
Sec. 10, all; sec. 12, E½W½.
T. 13 N., R. 31 E.,
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 14 N., R. 24 E.,
Sec. 6, lot 7.
T. 14 N., R. 27 E.,
Sec. 22, SW¼NW¼, NE¼SE¼.
T. 14 N., R. 28 E.,
Sec. 14, all; Sec. 28, all.
T. 15 N., R. 29 E.,
Sec. 30, NE¼NW¼.
T. 16 N., R. 26 E.,
Sec. 6, lots 1 to 6, incl., SE¼SW¼, S½SW¼.
T. 16 N., R. 28 E.,
Sec. 12, all.
T. 17 N., R. 30 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½; Sec. 6, lots 1 to 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼; Sec. 8, all; Sec. 10, all; Sec. 12, all; Sec. 14, all; Sec. 18, lots 1 to 4, incl., E½,E½W½; Sec. 20, all; Sec. 22, all; Sec. 24, all; Sec. 26, all; Sec. 28, all; Sec. 30, lots 1 to 4, incl., E½,E½W½; Sec. 34, N½, N½SW¼.
T. 17 N., R. 31 E.,
Sec. 30, lots 1 and 4, E½SW¼, SE¼.
T. 18 N., R. 27 E.,
Sec. 34, all.

Gila and Salt River Meridian, Navajo County, Arizona

T. 11 N., R. 22 E.,
Sec. 6, lot 1, SE¼NE¼, NE¼SE¼.
T. 13 N., R. 18 E.,
Sec. 6, lots 3, 4 and 5, SE¼NW¼.
T. 13 N., R. 19 E.,
Sec. 6, lots 6 and 7, E½SW¼, SE¼.
T. 13 N., R. 20 E.,
Sec. 22, N½.
T. 14 N., R. 20 E.,
Sec. 6, lots 5 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 17 N., R. 16 E.,
Sec. 10, all; sec. 12, lots 1 to 4, incl., W½E½, W½; Sec. 14, all; Sec. 22, all.
T. 17 N., R. 17 E.,
Sec. 6, lots 1 to 7, incl., S½NE¼, E½SW¼, SE¼NW¼, SE¼; Sec. 8, all; Sec. 18, lots 1 to 4, incl. E½,E½W½.
T. 18 N., R. 16 E.,
Sec. 14, all; Sec. 22, all; Sec. 24, all; Sec. 26, all; Sec. 28, all; Sec. 34, all.
T. 18 N., R. 17 E.,
Sec. 18, lots 1 to 4, incl., E½,E½W½; Sec. 28, all; Sec. 30, lots 1 to 4, incl., E½, E½W½.
T. 18 N., R. 19 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½.
T. 19 N., R. 20 E.,
Sec. 18, SE¼NE¼, SE¼SW¼, SE¼; Sec. 20, W½; Sec. 22, W½; Sec. 28, SE¼SW¼, S½SE¼; Sec. 30, SE¼; Sec. 34, E½, SE¼NW¼, E½SW¼.
T. 20 N., R. 19 E.,
Sec. 8, all; Sec. 18, lots 3 and 4, E½SW¼; Sec. 28, all; Sec. 30, lots 1 to 4, incl., E½, E½W½; Sec. 34, all.

Gila and Salt River Meridian, Maricopa County, Arizona

T. 3 N., R. 1 W.,
Sec. 1, lot 2, SW¼NE¼, E½SE¼.

In exchange for the federal mineral estate described above, the United States will acquire the following mineral estate from the State of Arizona:

Gila and Salt River Meridian, Coconino County, Arizona

T. 37 N., R. 5 E.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.
T. 38 N., R. 5 E.,
Sec. 36, E½, NW¼, N½SW¼.
T. 40 N., R. 4 E.,
Sec. 36, all.
T. 40 N., R. 5 E.,
Sec. 16, all; Sec. 32, all.
T. 40 N., R. 6 E.,
Sec. 16, all.
T. 41 N., R. 1 E.,
Sec. 36, all.
T. 38 N., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, N½S½.
T. 39 N., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.

Gila and Salt River Meridian, Mohave County, Arizona

T. 35 N., R. 11 W.,
Sec. 16, all.
T. 36 N., R. 9 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½.
T. 36 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 16, N½, SW¼, E½SE¼.
T. 37 N., R. 10 W.,
Sec. 36, all.
T. 37 N., R. 12 W.,
Sec. 16, all; Sec. 32, all.

T. 37 N., R. 14 W.,
Sec. 36, SE¼NE¼.
T. 38 N., R. 10 W.,
Sec. 2, Lots 2 to 4, incl., S½N½; Sec. 16, E½; Sec. 32, all.
T. 38 N., R. 12 W.,
Sec. 16, all; Sec. 32, all.
T. 38 N., R. 14 W.,
Sec. 32, all; Sec. 36, all.
T. 39 N., R. 4 W.,
Sec. 32, all.
T. 39 N., R. 10 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 16, SW¼, W½SE¼.
T. 39 N., R. 11 W.,
Sec. 36, SE¼.
T. 39 N., R. 12 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 16, all; Sec. 32, all.
T. 39 N., R. 13 W.,
Sec. 16, all; Sec. 36, all.
T. 39 N., R. 16 W.,
Sec. 13, N½NW¼; Sec. 23, NW¼; Sec. 32, lots 1 to 4, incl., E½; Sec. 36, all.
T. 40 N., R. 10 W.,
Sec. 32, N½NE¼.
T. 40 N., R. 15 W.,
Sec. 16, NE¼NE¼, NW¼NW¼, SW¼; Sec. 19, W½NE¼, SW¼NE¼.
T. 40 N., R. 16 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; Sec. 33, S½NW¼.
T. 41 N., R. 8 W.,
Sec. 2, lots 1 to 4, incl., S½NW¼, SW¼ SW¼SE¼; Sec. 16, all.
T. 41 N., R. 12 W.,
Sec. 32, all; sec. 36, al.
T. 41 N., R. 15 W.,
Sec. 16, all.
T. 41 N., R. 16 W.,
Sec. 16, all; sec. 32, lots 1 to 4, incl., E½E½; sec. 36, all.
T. 42 N., R. 8 W.,
Sec. 36, lots 1 to 4, incl., S½.
T. 42 N., R. 15 W.,
Sec. 32, lots 1 to 4, incl., S½; sec. 36, lots 1 to 4, incl., S½.
T. 42 N., R. 16 W.,
Sec. 32, lots 1 to 3, incl.; sec. 36, lot 4, S½.

Gila and Salt River Meridian, Maricopa County, Arizona

T. 1 N., R. 7 W.,
Sec. 2, lots 2 to 4, incl., S½NW¼, SW¼NE¼, S½; sec. 16, all; sec. 32, all.
T. 2 N., R. 4 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 36, all.
T. 2 N., R. 5 W.,
Sec. 16, all.
T. 1 S., R. 3 W.,
Sec. 36, all.
T. 1 S., R. 4 W.,
Sec. 32, all.
T. 2 S., R. 3 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 32, all; sec. 36, all.
T. 2 S., R. 4 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 36, all.
T. 3 S., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 32, all; sec. 36, all.
T. 3 S., R. 2 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 32, all; sec. 36, all.
T. 3 S., R. 3 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 16, all; sec. 32, all; sec. 36, all.
T. 3 S., R. 4 W.,
Sec. 36, all.
T. 3 S., R. 5 W.,
Sec. 36, S½, NW¼, W½NE¼, metes and bounds in E½NE¼.
T. 4 S., R. 1 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½; sec. 32, all.
T. 4 S., R. 4 W.,
Sec. 36, all.
T. 5 S., R. 3 W.,
Sec. 32, all.
T. 5 S., R. 4 W.,
Sec. 36, all.

Based on leasable and locatable mineral potential reports, it has been determined that the overall potential mineral value of the private and federal mineral estates are approximately equal.

Lands transferred from the United States will be conveyed subject to the following oil and gas leases:

AZA–022988
AZA–017205
AZA–023078
AZA–011316

Publication of this notice shall segregate the federal minerals, as described in this notice, from appropriation under the mining laws. This segregative effect shall terminate upon the issuance of a patent or two years from the date of this notice, or upon publication of a Notice of Termination.

Detailed information concerning the exchange, including the locatable mineral potential and the leasable mineral potential reports, can be obtained from the Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. For a period of forty-five (45) days, from the date of this notice, interested parties may submit comments to the Phoenix District Manager, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objective will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objectives, this realty action will become the final determination of the Department of the Interior.

Herman L. Kast,
Associate District Manager.
Date: August 24, 1988.

[FR Doc. 88–19864 Filed 8–31–88; 8:45 am]
BILLING CODE 4310–32–M

[U–54569; UT–040–08–4212–14]

Realty Action; Sale of Public Lands in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) public land described as Lot 3, Section 11, T. 42 S., R. 13 W., SLB&M, Utah, containing 41.95 acres, is proposed for sale by competitive bidding at no less than the appraised fair market value of $12,300.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomic to manage by a government agency.

DATES: Comments should be submitted to the address listed below by October 20, 1988. The sale will be held on November 15, 1988 at 2:00 p.m. m.d.t.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Dixie Resource Area Office, 225 North Bluff, St. George, Utah 84770 (801) 673–4654. The sale will be held at the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to all valid existing rights. If the tract of public land is not sold pursuant to this notice, it will remain available for sale by sealed bid at no less than the appraised value. Sealed bids will be opened on the first Tuesday of each month at 10:00 a.m. All bids must be received at the Dixie Resource Area Office no later than 4:30 p.m. on the day before the sale.

Any comments or objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Date: August 24, 1988.
Gordon Staker,
District Manger.
[FR Doc. 88–19902 Filed 8–31–88; 8:45 am]
BILLING CODE 4310–DQ–M

Fort Greely Draft Resource Management Plan/Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) and section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (DRMP)/Draft Environmental Impact Statement (DEIS) for the Fort Greely military withdrawal. The document addresses planning for nonmilitary use of the withdrawal. The draft statement presents a preferred plan and five alternatives, and analyzes the effects of each. One alternative is the "no action" alternative, describing present management. The preferred plan and the other alternatives describe management with varying emphasis on military uses, habitat protection, recreation, and economic development.

DATES: The DRMP/DEIS will be available for review and comment from September 2, 1988 to December 1, 1988. Comments received after the latter date may be too late to be integrated into the Final EIS. Public meetings on the plan have been scheduled for: November 15, 1988, 7 p.m. at the Delta Junction Community Center and November 16, 1988, 8 p.m. at the Bureau of Land Management Office, 1150 University Avenue, Fairbanks.

ADDRESS: Comments on the DRMP/DEIS may be sent to: Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Michael J. Penfold,
State Director.
[FR Doc. 88–19894 Filed 8–31–88; 8:45 a.m.]
BILLING CODE 4310–JA–M

Fort Wainwright Draft Resource Management Plan/Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) and section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of Interior, Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (DRMP/Draft Environmental Impact Statement (DEIS) for the Fort Wainwright military withdrawal. This withdrawal encompasses that part of Fort Wainwright known as the Yukon Maneuver Area, and is north and east of Eielson Air Force Base. The document addressed planning for nonmilitary use of the withdrawal. The draft statement presents a preferred plan and four alternatives, and analyzes the effects of each. One alternative is the "no action" alternative, describing present management. The preferred plan and the other alternatives describe management with varying emphases on military uses, habitat protection, recreation, and economic development.

DATES: The DRMP/DEIS will be available for review and comment from September 2, 1988 to December 1, 1988. Comments received after the latter date may be too late to be integrated into the Final EIS. BLM will hold a public meeting on the plans at its offices at 1150 University Avenue, Fairbanks, Alaska at 7 p.m. on November 16, 1988.

ADDRESS: Comments on the DRMP/DEIS may be sent to: Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Michael J. Penfold,
State Director.
[FR Doc 88–19895 Filed 8–31–88; 8:45 am]
BILLING CODE 4310–JA–M

[NM–010–GP8–0121]

Availability of the Farmington Resource Management Plan and the Record of Decision and Notice of Off-Road Vehicle and Area of Critical Environmental Concern Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Farmington Resource Area, Albuquerque District, announces the availability of the Farmington Resource Management Plan (July 1988) as approved in the Record of Decision (July 10, 1988).

The Record of Decision and the Resource Management Plan are available by contacting the Bureau office below. The Record of Decision is free of charge and the Resource Management Plan will be sold for three dollars each.

The Bureau has completed decisions to designate about 1.5 million acres of public land in San Juan, McKinley, Rio Arriba, and Sandoval Counties, in New Mexico, as open, limited, or closed to motor vehicle travel.

Designations are a result of land use planning decisions made in the Farmington Resource Management Plan. The Plan also designates nineteen Areas of Critical Environmental Concern (ACECs) and expands an existing ACEC that was designated by the Rio Puerco Resource Management Plan.

SUPPLEMENTARY INFORMATION: The authority for the off-road vehicle designations is derived from Executive orders 11644 and 11989, and the regulations contained in 43 CFR Part 8340. The area designations and affected acreages are as follows:

1. Closed Designations.

Farmer's Arroyo Site (40)
Beechatuda Tongue (80)
Fossil Forest Research Natural Area (2,770)
Bisti Wilderness (3,968)
De-na-zin Wilderness (24,137)
Thomas Canyon (4,630)
Negro Canyon (1,600)
Simon Canyon-partial (1,770)

2. Limited "Existing Roads and Trails" Designation.

Chaco Outliners Group (2,570)
Reese Canyon Research Natural Area (2,200)
Bald Eagle ACEC (3,840)
Torrejon Fossil Fauna ACEC (4,480)
Kutz Canyon Paleontological Area (25,826)
Betonnie Tsosie (5,240)
Farmington Lake Watershed (1,872)
Ah shi-sle-pah Wilderness Study Area (6,565)
Head Canyon ORV Competition Area (150)
Native American Traditional Use & Sacred Areas (4,430)

3. Limited "Designated Roads and Trails" Designation.

Chacra Mesa ACEC Complex (11,330)
The Hogback ACEC (9,480)
Simon Canyon Recreation Area (2,041)
Angel Park Recreation Area (10,240)
Carracas Mesa (7,000)
East Side Rincon Site (100)
Navajo Refugee Sites (11,600)

4. Open Designation.[1]

[1] Other public lands in the Resource Area that are not accounted for above (about 1,300,000).

Dunes Vehicle Recreation Area (1,000)
Laguna Seca Mesa (2,400)
Coal Belt (77,945)
Rights-of-Way Windows (12,600)

The designations above will be identified on the Albuquerque District Off-Road Vehicle Designation Order Roster. Where areas contain non-Bureau inholdings, the designation cannot apply. However, the designation will apply opon acquisition of the inholding.

ACEC designations and acreages are as follows:
Angel Peak (500)
Badlands (1,360)
Log Jam (320)
Lost Pine (80)
Crow Canyon District (3,580)
Hooded Fireplace and Largo School District (320)
Tapacito and Split Rock District (240)
Frances Ruin (40)
Christmas Tree Ruin (40)
San Rafael Canyon (5,460)
Salt Point (640)
Pierre's Site (440)
Halfway House (40)
Twin Angels (40)
Casamero Community (160)
Chacra Mesa Complex (6,370)
Hogback (7,520)
Aztec Gilia (6,400)
Bald Eagle (1,700)
Torrejon Fossil Fauna (4,480). This ACEC was expaned from 2,900 acres.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Farmington Resource Management Plan or the Record of Decision call (505) 325–5344 or write Bill Overbaugh, RMP Team Leader, BLM-Farmington RA, 1235 La Plata Hwy., Farmington, NM 87401.

Dated: August 24, 1988.

Dennis R. Erhart,

Acting State Director.

[FR Doc. 88–19900 Filed 8–31–88; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–921–08–4220–11, A–6641]

Proposed Partial Termination and Partial Continuation of Withdrawal; Arizona

August 23, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years a portion of an order which withdrew lands for an indefinite period of time for Sedona Administrative Site and terminate the remaining lands in the order to facilitate a Forest Service land exchange whereby those lands will be conveyed out of Federal ownership for the benefit of the Flagstaff Public Schools. The portion of the order to be continued is still needed for the purpose it was withdrawn and will have no change in land use. The portion to be terminated is no longer needed for the administrative site. The Forest Service proposes that the lands withdrawn for the Sedona Administrative Site be segregated from operation of the mining laws only.

DATE: Comments to this notice should be received on or before November 30, 1988.

ADDRESS: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16563, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: Joy Ayers, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–241–5534.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the order withdrawing lands from appropriation and use of all kinds under the public land laws for an indefinite period of time for the Sedona Administrative Site by Secretarial Order dated July 10, 1908, enlarged by Public Land Order 1091 dated March 10, 1955, and partially revoked by Public Land Orders 4099 and 5200 dated September 29, 1966, and April 5, 1972, respectively, be partially modified and continued for 20 years and the remaining portion be terminated, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Gila & Salt River Meridian

Continue

T. 17 N., R. 6 E.,
Sec. 7, E½SW¼NE¼NE¼SW¼SE¼, SE¼NE¼NE¼SW¼SE¼, E½SE¼NE¼SW¼SE¼, E½W½SE¼NE¼SW¼SE¼, W½E½NW¼NW¼SW¼SE¼, W½NW¼NW¼SW¼SE¼, SW¼NW¼SW¼SE¼, W½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, S½NE¼SW¼SE¼SW¼SE¼, W½SW¼SE¼SW¼SE¼, SE¼SW¼SE¼SW¼SE¼, E½E½SE¼SW¼SE¼, E½W½E½SE¼SW¼SE¼, SW¼NW¼SE¼SE¼SW¼SE¼, W½SW¼SE¼SE¼SW¼SE¼.

T. 17 N., R. 6 E.,
Sec. 7, NE¼SW¼SW¼SE¼, NW¼SE¼SW¼SE¼, W½W½NE¼SE¼SW¼SE¼, NW¼NW¼SE¼SE¼SW¼SE¼, N½NE¼SW¼SE¼SW¼SE¼.

The areas described contain 21.0975 acres to be continued and 6.09 acres to be terminated in Coconino County.

The purpose of the withdrawal is for the administration and protection of the administrative site. The continued portion of the order will now be closed to operation of the mining laws only. The terminated portion of the withdrawal will open the lands to surface entry and operation of the mining and mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential 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 withdrawal will be modified and continued and, if so, for how long. Notice of final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–19865 Filed 8–31–88; 8:45 am]

BILLING CODE 4310–32–M

[WY–930–08–4220–11; WYW 73082, WYW 043671, WYW 043372, WYS 040577, WYW 094183, WYW 0105362, WYW 22216]

Proposed Continuation of Forest Service Withdrawals; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes to continue the existing withdrawals on 990.95 acres of national forest land in the Big Horn National Forest for an additional 20 years. The land has been and will remain segregated from mining location. Only 304.89 acres have been segregated from surface entry. All of the land has been and will remain open to mineral leasing. The remaining acreage in the existing withdrawals will be teminated.

DATE: Comments should be received by November 30, 1988.

ADDRESS: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, 307–772–2072.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Orders of January 14, 1907, and

November 24, 1908, and Public Land Order Nos. 1529, 3250, 1421, 4922, 1560, 3282, and 3302, dated October 18, 1957, October 10, 1963, May 23, 1957, October 19, 1970, December 6, 1957, December 3, 1963, and January 13, 1964, respectively, be continued for a period of 20 years to protect the capital investments on the administrative sites, picnic grounds, campgrounds, ranger stations, lookout towers, recreation areas, organization and highway maintenance camps, a trailer park, and a community center. The land is described as follows:

Sixth Principal Meridian

Big Horn National Forest

Hunter Administrative Site

T. 50 N., R. 84 W.,
Sec. 10, NW¼SE¼, SW¼NE¼SE¼, W½SE¼NE¼SE¼.

Shell Creek Administrative Site

T. 53 N., R. 88 W.,
Sec. 19, NE¼SW¼SE¼, NW¼SE¼SE¼.

Porcupine Creek Administrative Site

T. 56 N., R. 91 W.,
Sec. 18, NW¼NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼.

Muddy Creek Administrative Site

T. 48 N., R. 84 W.,
Sec. 2, NE¼SW¼SE¼NE¼.

Tensleep Meadows

T. 49 N., R. 86 W.,
Sec. 30, NW¼NE¼SE¼, E½NW¼SE¼, E½W½NW¼SE¼.

Sheridan County Youth Inc., Organization Camp

T. 54 N., R. 88 W.,
Sec. 6, N½ of lot 4.

Bald Mountain Campgrounds

T. 56 N., R. 91 W.,
Sec. 30, SE¼ of lot 1, NE¼ of lot 2, W½NW¼SE¼NW¼.

Burgess Ranger Station

T. 56 N., R. 89 W.,
Sec. 36, S½SW¼NE¼NW¼, S½S½NW¼NW¼, N½SW¼NW¼, NW¼SE¼NW¼, E½SE¼NW¼SW¼, W½SW¼NE¼SW¼.

Porcupine Creek Recreation Area

T. 56 N., R. 91 W.,
Sec. 18, SE¼ of lot 2, S½NW¼SE¼NW¼, SW¼SE¼NW¼, S½SE¼SE¼NW¼, E½E½NE¼SW¼.
T. 56 N., R. 92 W.,
Sec. 12, SW¼NE¼SE¼SW¼.

Big Goose Administrative Site

T. 53 N., R. 86 W.,
Sec. 4, S½ of lot 5.

Big Horn Baptist Youth Organization Camp

T. 55 N., R. 88 W.,
Sec. 4, NW¼NW¼SE¼.

Boulder Park Campground and Trailer Park

T. 48 N., R. 86 W.,
Sec. 6, N½ and SW¼ of lot 12.

Burgess Junction Highway Maintenance Camp

T. 55 N., R. 89 W.,
Sec. 1, SW¼NE¼SW¼NE¼, SE¼NW¼SW¼NE¼, NE¼SW¼SW¼NE¼, NW¼SE¼SW¼NE¼.

Cabin Creek Campground

T. 53 N., R. 89 W.,
Sec. 14, SW¼NE¼SW¼, E½SE¼NW¼SW¼.

Deer Park Campground

T. 49 N., R. 86 W.,
Sec. 4, NW¼NW¼SW¼.

High Park Lookout

T. 48 N., R. 86 W.,
Sec. 4, SE¼SW¼SE¼SW¼;
Sec. 9, NE¼NW¼NE¼NW¼.

Island Park Campground

T. 49 N., R. 86 W.,
Sec. 20, S½NE¼SE¼NW¼, NW¼SE¼SE¼NW¼.

Leigh Creek Picnic Ground

T. 48 N., R. 87 W.,
Sec. 33, S½S½NE¼SE¼, NE¼SE¼NE¼SE¼.

Lower Doyle Campground

T. 47 N., R. 84 W.,
Sec. 5, S½NE¼SW¼NW¼, SE¼NW¼SW¼NW¼.

West Lake Campground

T. 50 N., R. 86 W.,
Sec. 33, E½SE¼NE¼SW¼, NE¼NE¼SE¼SW¼.

North Tongue Campground

T. 55 N., R. 89 W.,
Sec. 1, N½ of lot 4;
Sec. 2, NE¼ of lot 1.
T. 56 N., R. 89 W.,
Sec. 35, S½S½SW¼SW¼, SE¼SE¼SE¼SE¼.

Pine Island Community Center

T. 55 N., R. 88 W.,
Sec. 5, NW¼ of lot 1, NE¼ of lot 2.

Prune Creek Campground

T. 55 N., R. 88 W.,
Sec. 4, S½NE¼NE¼SW¼, NW¼NE¼SW¼, E½NE¼NW¼SW¼, NE¼SW¼NE¼SW¼, N½SE¼NE¼SW¼.

Shell Creek Campground

T. 53 N., R. 888 W.,
Sec. 19, S½ of lot 3.

Sibley Lake Campground and Picnic Ground

T. 55 N., R. 88 W.,
Sec. 10, NE¼NE¼, N½SE¼NE¼.

Worland Boy Scout Organization Camp

T. 49 N., R. 86 W.,
Sec. 31, SE¼NE¼SW¼SE¼.

Ranger Creek Campground

T. 53 N., R. 88 W.,
Sec. 19, SE¼SW¼SE¼, SW¼SE¼, SE¼, SW¼SE¼SE¼SE¼;
Sec. 30, NW¼NE¼NE¼NE¼, N½NW¼NE¼NE¼, N½NE¼NW¼NE¼.

Meadow Lark Lake Area

T. 48 N., R. 86 W.,
Sec. 5, S½ of lot 6;
Sec. 6, NW¼ of lot 8.
T. 49 N., R. 86 W.,
Sec. 32, SE¼SW¼SE¼;
Sec. 33, W½SW¼NE¼, S½NE¼NW¼, E½NW¼NW¼, E½SE¼NW¼, NE¼NE¼SW¼, NE¼SE¼SW¼, NW¼NW¼SE¼, NW¼SW¼SE¼.

Paintrock Lakes Recreation Area

T. 51 N., R. 87 W.,
Sec. 7, SE¼ of lot 3, NW¼SE¼SW¼;
Sec. 18, N½ of lot 2.
T. 51 N., R. 88 W.,
Sec. 12, NE¼NE¼SE¼, E½NW¼NE¼SE¼, SW¼NE¼SE¼SE¼, SE¼NW¼SE¼SE¼, NE¼SW¼SE¼SE¼, NW¼SE¼SE¼SE¼.

Woodrock Recreation Area

T. 54 N., R. 88 W.,
Sec. 3, N½ and SE¼ of lot 3, SE¼NE¼SW¼NW¼, NE¼SE¼SW¼NW¼, NW¼SW¼SE¼NW¼, SW¼NW¼SE¼NW¼.
T. 55 N., R. 88 W.,
Sec. 27, SW¼NE¼NW¼, NW¼SE¼NW¼;
Sec. 34, S½SE¼SE¼SW¼, S½SW¼SW¼SE¼.

Big Horn Baptist Youth Organization Camp Addition

T. 55 N., R. 88 W.,
Sec. 4, NE¼NW¼SE¼.

Coffeen Park Campground

T. 53 N., R. 86 W.,
Sec. 32, SW¼NW¼SE¼.

Cross Creek Campground

T. 53 N., R. 86 W.,
Sec. 21, NE¼SE¼SE¼.

East Fork Campground

T. 53 N., R. 86 W.,
Sec. 3, SW¼SE¼NW¼, W½SE¼SE¼NW¼.

Little Goose Campground

T. 53 N., R. 85 W.,
Sec. 5, E½NE¼SE¼SW¼, W½NW¼SW¼SE¼.

Owen Creek Campground Addition

T. 55 N., R. 88 W.,
Sec. 31, NE¼NW¼NE¼.

Prune Creek Campground Addition

T. 55 N., R. 88 W.,
Sec. 4, SE¼SE¼SW¼NW¼, except area included in PLO 2647 for U.S. 14 Roadside Zone.

Twin Lakes Campground

T. 54 N., R. 87 W.,
Sec. 35, S½SW¼SW¼NE¼, N½NW¼NW¼SE¼.

Tie Flume Campground

T. 55 N., R. 88 W.,
Sec. 27, NE¼SW¼NW¼.

The areas described aggregate 990.95 acres in Big Horn, Sheridan, Washakie, and Johnson Counties.

The purpose of the withdrawals is to protect the capital investments at the administrative sites, picnic grounds, campgrounds, ranger stations, lookout

towers, recreation areas, organization and highway maintenance camps, a trailer park, and a community center. The withdrawals segregate the land from the operation of the mining laws, and some of the land from surface entry. The land is not segregated from mineral leasing. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations, may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Date: August 24, 1988.

Hillary A. Oden,

State Director.

[FR Doc. 88-19903 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-22-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Petition Process for Designation of Federal Lands as Unsuitable for All or Certain Types of Surface Coal Mining Operations and for Termination of Previous Designations 30 CFR Part 769

OMB Number: None assigned

Abstract: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition. The information requested will aid the regulatory authority in the decision-making process to approve or disapprove a request to designate or terminate an area as unsuitable.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Individuals, Industry, and Environmental Groups

Annual Responses: 5

Annual Burden Hours: 350

Estimated Completion Time: 70. Hours

Bureau clearance officer: Nancy Ann Baka (202) 343-5981.

Date: August 24, 1988.

Richard O. Miller,

Chief, Regulatory Development and Issues Management Office.

[FR Doc. 88-19883 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Porcelain-on-Steel Teakettles From Taiwan; Dismissal of Request for Institution of a Review Investigation

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show good cause or changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731-TA-299 (Final), regarding porcelain-on-steel cooking ware from Taiwan. The request for termination of the antidumping order on porcelain-on-steel cooking ware from Taiwan applied only insofar as it covered teakettles.[1]

[1] For the purposes of this notice, porcelain-on-steel teakettles are teakettles not having self-contained heating elements, of steel and enameled or glazed with vitreous glasses. Porcelain-on-steel teakettles are provided for in item 654.08 of the Tariff Schedules of the United States and subheading 7023.94.00 of the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-252-1191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: On November 26, 1986, the Commission published in the **Federal Register** its determination in investigation No. 731-TA-299 (Final), Porcelain-on-Steel Cooking Ware from Taiwan (51 FR 42946). The Commission determined that an industry in the United States was materially injured by reason of imports from Taiwan of porcelain-on-steel cooking ware which had been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). On December 2, 1986, the Department of Commerce issued an antidumping order, notice of which was published in the **Federal Register** (51 FR 43416).

On April 21, 1988, the Commission received a request filed on behalf of M. Kamenstein, Inc., pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. 731-TA-299 (Final). Under § 207.45 of the Commission's Rules of Practice and Procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." The petitioner alleged that the circumstances of this case constituted "good cause" for conducting an immediate review.

On June 8, 1988, the Commission requested written comments in the **Federal Register** (53 FR 21531) concerning whether the alleged changed circumstances were sufficient to warrant institution of a review investigation. Comments were supplied by counsel on behalf of General Housewares Corporation (GHC) opposing the institution of a review investigation. GHC was the petitioner in the original investigation (No. 731-TA-299 (Final). Comments were also received from counsel on behalf of

M. Kamenstein, Inc., supporting the institution of a review investigation.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request does not show good cause or changed circumstances sufficient to warrant institution of a review investigation regarding procelain-on-steel cooking ware from Taiwan. A Memorandum Opinion, setting forth the reasons for dismissing this request, will be made available in the Secretary's office.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 25, 1988.

[FR Doc. 88-19850 Filed 8-31-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33 (Sub-No. 53]

Finding; Union Pacific Railroad Co.—Abandonment—Between Hansen And River, In Hall County, NE

The Commission has issued a certificate authorizing Union Pacific Railroad Company to abandon its 10.9-mile rail line between Hansen (milepost 7.5) and River (milepost 18.4), all in Hall County, NE. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance will fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 24, 1988.

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

Noreta R. McGee,

Secretary.

[FR Doc. 88-19905 Filed 8-31-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 16, 1988, a proposed Consent Decree in *United States v. Shell Oil Company*, Civil No. 88-5010-ER was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the discharge of sulfur dioxide in excess of the limits set forth in the New Source Performance Standards ("NSPS") promulgated pursuant to the Clean Air Act. The proposed Consent Decree requires Shell to comply with the Clean Air Act and the NSPS, to install equipment to prevent future violatons and to pay a civil penalty of $66,900.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Shell Oil Company, D.J. Ref. 90-5-2-1-1228.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 Spring Street, Los Angeles, California 90012, and at the Region 9 Office of the Environmental Protection Ageny, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.50 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-19866 Filed 8-31-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-62]

Elliott Pharmacy; Revocation of Registration

On July 2, 1987, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Elliott Pharmacy (Respondent), 1000 Chartiers Avenue, Pittsburgh, Pennsylvania 15220, proposing to revoke its DEA Certificate of Registration AS1698971. The statutory basis for this action was that the pharmacy's continued registration was inconsistent with the public interest based upon its dispensing of controlled substances for other than legitimate medical purposes, and large shortages of controlled substances. Citing his preliminary finding that the pharmacy's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the pharmacy's DEA Certificate of Registration during the pendency of proceedings.

The Order to Show Cause and Immediate Suspension of Registration was served on Mr. Sidney Silverman, owner of Respondent pharmacy. By letter dated July 30, 1987, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner, and a hearing was scheduled for February 10 and 11, 1988, in Washington, DC. Prior to the date of the hearing, Respondent's counsel requested that the hearing be postponed until culmination of an ongoing criminal investigation of Mr. Silverman and Respondent Pharmacy. It was agreed between counsel for the Respondent and counsel for the Government that the hearing would be cancelled and that Respondent would agree that the suspension of its DEA registration would remain in effect until resolution of the pending criminal proceedings. Respondent further agreed that if Mr. Silverman was convicted of a felony relating to controlled substances, Respondent would consent to the revocation of its DEA registration, and

that if Mr. Silverman was not so convicted, the matter would proceed to hearing. The Administrative Law Judge terminated proceedings before her on July 28, 1988, following the conviction of Mr. Silverman in the United States District Court for the Western District of Pennsylvania of 17 counts of unlawful distribution of oxycodone, a Schedule II narcotic controlled substance, one count of unlawful distribution of phenmetrazine, a Schedule II stimulant controlled substance and two counts of mail fraud, all felony violations of Federal law.

The Administrator finds that as the result of a DEA investigation of several physicians and pharmacists in the Pittsburgh area, on April 15, 1988, Sidney Silverman, pharmacist and owner of Respondent pharmacy, was charged in a 98 count indictment in the United States District Court for the Western District of Pennsylvania with 93 counts of illegal distribution of various controlled substances in violation of 21 U.S.C. 841(a)(1) and five counts of mail fraud in violation of 18 U.S.C. 1341. On May 31, 1988, Mr. Silverman pled guilty to 18 counts of unlawful distribution of controlled substances and two counts of mail fraud. On July 6, 1988, Mr. Silverman was convicted and sentenced by United States District Court Judge Gerald Weber to 3 years imprisonment, all but six months suspended, a $5,000 fine and a special assessment of $1,000.

The investigation which resulted in Mr. Silverman's conviction revealed that for a one year period from June 1986 through June 1987, an audit of the pharmacy's records showed shortages for the Schedule II narcotics Percodan and Percocet. In addition, DEA investigators verified approximately 2,000 prescriptions for controlled substances filled at the pharmacy during the one year period. These prescriptions were allegedly written by five physicians. Four physicians indicated in statements to the investigators that they had not written or authorized the prescriptions in question, and that the individuals named as patients on the prescriptions were not their patients. The fifth physician had been dead for five years. There were 34 prescriptions for the narcotics Percodan and Hycodan listing the deceased physician as the prescriber.

An investigation of Gerald Schor, M.D., conducted by DEA Agents, revealed that Dr. Schor was writing prescriptions for individuals without seeing the individuals and in names provided to him. Confidential informants, working with the DEA Agents, told the Agents that arrangements were made with Mr. Silverman to fill Dr. Schor's prescriptions at Respondent pharmacy. An undercover investigation also revealed that Mr. Silverman filled post-dated prescriptions for controlled substances which were presented with other prescriptions, charging an extra five dollars for filling the post-dated prescriptions.

Following the execution of a search warrant at Respondent pharmacy on June 5, 1987, Mr. Silverman was interviewed by DEA Agents and Investigators. Mr. Silverman stated that his volume of controlled substance prescriptions had increased in the last several months. He further indicated that he knew that mnay of the individuals for whom he filled prescriptions for controlled substances were drug abusers and were selling the drugs they obtained from him on the street. Mr. Silverman admitted to filling post-dated prescriptions for controlled substances, and to charging an extra fee for such prescriptions.

The Administrator finds that Mr. Silverman's conviction of felony violations of the Controlled Substances Act provides lawful grounds for the revocation of Respondent pharmacy's DEA Certificate of Registration. The Administrator has consistently held that the registration of a pharmacy may be revoked as a result of the controlled substance felony conviction of the pharmacy's owner, majority shareholder, officer, managing pharmacist or other key employee. See, *White's Best Buy Drugs*, Docket No. 87–41, 53 FR 7251 (1988); *Unarex of Plymouth Road*, d/b/a *Motor City Prescription Center* and *Unarex of Dearborn*, d/b/a *Motor City Prescription Center*, Docket Nos. 84–1 and 84–2, 50 FR 8677 (1985); *Bourne Pharmacy, Inc.*, Docket No. 83–32, 49 FR 32816 (1984), and cases cited therein. Mr. Silverman has consented to the revocation of Respondent's registration as a result of his felony conviction. The Administrator finds that Mr. Silverman's conviction and the conduct which resulted in the diversion of thousands of dosage units of controlled substances per month into illicit channels require that Respondent's registration be revoked.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS1698971, previously issued to Elliott Pharmacy, be, and it hereby is, revoked. Any outstanding applications for renewal of that registration are hereby denied. This order is effective October 3, 1988.

Dated: August 26, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–19915 Filed 8–31–88; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts, Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 22, 1988, from 9:00 a.m.–5:00 p.m., and on September 23, 1988, from 9:00 a.m.–4:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics of discussion will include cultural diversity issues; Visual Artists Fellowships; Visual Artists Fellowships Research Project; guidelines and Five-Year plan update.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations National Endowment for the Arts.

August 26, 1988.

[FR Doc. 88–19924 Filed 8–31–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Nuclear Power Reactor Operating Licenses Annual License Fee for Fiscal Year 1989

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notification regarding annual fee for nuclear power reactor operating licenses.

SUMMARY: The Nuclear Regulatory Commission is hereby noticing that the annual fee amount for FY 1989 for nuclear power reactor operating licenses will not be published at this time

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Chief, License Fee Management Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–7225.

BACKGROUND: Under the provisions of 10 CFR 171.13 on Annual Fee for Power Reactor Operating Licenses, the Nuclear Regulatory Commission (NRC) is required to publish notice of the annual fee amount for each fiscal year on or before September 1 of each year. The formula set forth in 10 CFR 171.15(c) was used for FY 1987 and 1988. That formula will not be applicable for FY 1989 because the NRC is revising its regulations. Comments on the revisions to the rule as proposed on June 27, 1988 (53 FR 24077), are currently being reviewed. This review will not be completed in time for NRC to have a final rule published by September 1, 1988. Therefore, an annual fee amount for FY 1989 will not be published at this time. Invoices for the first quarterly payment in FY 1989 will be delayed. The NRC expects to issue invoices to applicable licensees once the final rule is promulgated and published.

Dated at Bethesda, Maryland, this 26th day of August 1988.

For the Nuclear Regulatory Commission.

Lee Hiller,

Assistant Controller.

[FR Doc. 88–19910 Filed 8–31–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–529, 50–260, and 50–296]

Tennessee Valley Authority; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 issued to Tennessee Valley Authority (TVA or the licensee), for the operation of the Browns Ferry Nuclear Plant, Units 1, 2, and 3, located in Limestone County, Alabama.

The licensee proposes to temporarily remove certain operability requirements for the Control Room Emergency Ventilation System (CREVS). This is TS change 253 in the licensee's application dated August 17, 1988. The proposed change would denote limiting conditions for operations (LCOs) 3.7.E.1, 3.7.E.3, and 3.7.E.4 by an asterisk and would define them as not being applicable until the withdrawal of the first control rod for the purpose of making the reactor critical from the Unit 2, Cycle 5 outage.

Before issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided by the licensee in its submittal and is given below.

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed temporary changes to the technical specifications involve relaxations to system operability requirements for the CREVS during those activities leading to and just before withdrawal of the first control rod for the purpose of making the reactor critical from the unit 2, cycle 5 outage. The fuel that will be moved form the spent fuel pool to the reactor vessel has decayed for approximately three years, thus reducing the need for this system to be operable by the technical specifications for postaccident iodine removal.

The fuel handling accident evaluated in the Final Safety Analysis Report (FSAR), section 14.6.4, represents the most severe event in the terms of radioactive release and dose consequences that are applicable. The movement of the fuel from the fuel pool to the reactor vessel is a typical refueling operation in which the current FSAR analysis is still valid. The curernt conditions of the fuel are well within the bounds of the FSAR analysis. The FSAR calculations used freshly irradiated fuel (unloaded from the core 24 hours after reactor shutdown) which contains large amounts of fission products, specifically iodine. The irradiated fuel presently being handled has decayed approximately three years and the only remaining volatile fission product of any significance is Kr–85, which is an inert gas. Because of this decay time, there is essentially no iodine present and therefore no need for the operability of this system with iodine removal capability.

The proposed temporary changes to the technical specifications do not affect the precursors for any accident analysis and therefore do not involve a significant increase in the probability of an accident previously evaluated. The present required availability of systems in the technical specifications is based on FSAR accident analysis assumptions and limitations. The present condition of the fuel in the spent fuel pool is such that over 300 assemblies would have to fail before the FSAR limiting assumptions for releases and dose consequences could be reached, thus allowing a reduction in the number of systems required to mitigate such a limiting event. The requested relaxation in system operability for the CREVS has been evaluated and a determination reached that the present FSAR assumptions and limitations will be maintained. Therefore, the proposed temporary changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated. The proposed temporary changes will relax present system operability requirements, however, no new modes of plant operations are introduced which could contribute to the possibility of a new or different kind of accident. The fuel handling accident is the most severe event that could occur during fuel load or any other activity being conducted just before withdrawal of the first control rod for the purpose of making the reactor critical from the unit 2, cycle 5 outage.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed temporary technical specification

changes will reduce the operability requirements of the CREVS during fuel load and those activities leading to the withdrawal of the first control rod for the purpose of making the reactor critical from the current outage. However, the irradiated fuel has decayed for approximately three years and the only remaining volatile fission product of any significance is Kr–85. Essentially, no iodine is present in the decayed fuel. Because of the "scrubbing" effect of the fuel pool water and since Kr–85 is the only radioisotope of any significance, virtually no radioactive particulates would be present in the CREVS intake ductwork. Since essentially no iodine is currently present in the fuel, the filtration function that CREVS provides would not be needed until after reactor [criticality] critically in which the production of iodine would begin. Thus, the relaxation in the system operability requirements for CREVS until just before the withdrawal of the first control rod for the purpose of making the reactor critical from the current outage allows restart work to be completed and does not reduce the margin of safety.

The proposed temporary changes will ensure that the appropriate safety-related systems needed to mitigate the fuel handling accident are operable and will be able to perform their intended safety function if called upon. Therefore, the proposed changes do not represent a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources, Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice.

By October 3, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the request for amendment involves a significant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorneys for the Licensee.

Nontimely filings of the petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board designated to rule on the petition and/or requests, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 25th day of August 1988.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–19911 Filed 8–31–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–259/260/296]

Tennessee Valley Authority; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its November 20, 1985 application to amend the Browns Ferry Nuclear Plant, Units 1, 2 and 3 Technical Specifications. The proposed amendment would have revised the Technical Specifications to delete the requirement to check smoke detector sensitivity in accordance with the manufacturer's instructions. The Commission issued a Notice of Consideration of Issuance of the Amendment in the Federal Register on July 2, 1986 (51 FR 24262). By letter dated August 3, 1988, the licensee stated that the November 20, 1985 application for amendments had been superseded by its August 3, 1988 application for amendments of the same Technical Specifications. Consequently, the licensee requested, pursuant to 10 CFR 2.107, that the November 20, 1985 application for amendments be withdrawn.

For further details with respect to this action, see (1) the application for amendments dated November 20, 1985, and (2) the licensee's letter of August 3, 1988, requesting the November 20, 1985, application for amendments be withdrawn. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Athens Public Library, South and Forrest, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 24th day of August 1988.

For The Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–19912 Filed 8–31–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co. et al.[1]; Issuance of Corrected Amendments to Construction Permits

On August 10, 1988 (53 FR 31778–79) the U.S. Nuclear Regulatory Commission (the Commission) issued Amendment No. 9 to Construction Permit No. CPPR–126 and Amendment No. 8 to Construction Permit No. CPPR–127 for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, to show a change in ownership interest.

Due to an administrative error, these amendments did not make clear that the ownership transfers from Texas Municipal Power Agency to Texas Utilities Electric Company authorized by the amendments would take place in 10 installments as set forth in the Agreement attached to the application dated March 4, 1988.

The Commission has issued corrected amendments to provide this clarification regarding authorized transfers.

Dated at Rockville, Maryland, this 25th day of August 1988.

[1] The current Construction Permit holders for the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company, Brazos Electric Power Cooperative, Inc., Texas Municipal Power Agency and Tex-La Electric Cooperative of Texas, Inc. Transfer of ownership interest from Texas Municipal Power Agency to Texas Utilities Electric Company authorized herein takes place in 10 installments as set forth in the Agreement attached to the application for amendment dated March 4, 1988. At the completion thereof Texas Municipal Power Agency is no longer an applicant or construction permit holder.

For The Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Special Projects.

[FR Doc. 88–19913 Filed 8–31–88; 8:45 am]

BILLING CODE 7590–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 21, 1988, at 10:00 a.m.

ADDRESS: The meeting will be held at the Postmaster General's Suite, Third Floor, Post Office Building, 1200 Pennsylvania Avenue NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Date: August 24, 1988.

M.J. Brodie,

Executive Director.

[FR Doc. 88–19867 Filed 8–31–88; 8:45 am]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16538; 812–6760]

National Liquid Reserves, Inc., et al.; Application

August 26, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: National Liquid Reserves, Inc. ("NLR"), The Tax Free Money Fund, Inc. ("TFM"), The Muni Bond Funds ("MBF"), Vantage Money Market Funds ("VMM"), Smith Barney Funds, Inc. ("SBF") and Smith Barney Equity Funds, Inc. ("SBEF") (NLR, TFM, MBF, VMM, SBF, and SBEF collectively, "Funds"); Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney"); Smith, Barney Advisers, Inc. ("SBA"); and, Mutual Management Corp. ("MMC") (SBA and MMC collectively, "Advisers").

Relevant 1940 Act Sections: Exemptions requested under section 6(c) from section 15(a).

Summary of Application: Applicants seek an order to permit Advisers to have served as investment advisers (or subadvisers) to the respective Funds pursuant to Interim Agreements entered into without shareholder approval (prior to new management agreements) between the Funds and the Advisers, and to permit Advisers to receive retroactive reimbursement from each of the Funds for the lesser of the fees charged or the costs incurred for providing services during the Interim Agreements.

Filing Date: The application was filed on June 17, 1987, and amended on June 19, 1987, August 14, 1987, April 6, 1988 and July 5, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272–3023 or Karen L. Skidmore, Branch Chief at (202) 272–3016, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Until June 19, 1987, each of the Advisers was controlled by Smith Barney Inc. ("SBI"). SBI was a holding company engaged, primarily through Smith Barney, in investment banking and brokerage businesses. Pursuant to a May 26, 1987 agreement between NY Acquisitions Inc. ("NY Acquisition"), a wholly-owned subsidiary of Primerica Corporation ("Primerica"), and SBI, NY Acquisition was merged into SBI on June 19, 1987 (the "Closing Date") and became a wholly-owned subsidiary of Primerica. Each of the former, pre-merger management agreements (the "Former Agreements") of the Funds provided that it would terminate upon "assignment" as such is defined in section 2(a)(4) of the 1940 Act. The merger ("Merger") of NY Aquisition into SBI and the consequent passing of control from the shareholders of SBI to Primerica may be deemed to have resulted in an assignment and termination of the Former Agreements under the 1940 Act.

2. Smith Barney is a registered investment adviser and a registered broker/dealer engaged in the securities underwriting and securities and commodities brokerage business. Smith Barney has served as investment manager to VMM since the Fund's commencement of operations in October 1982.

3. SBA, a registered investment adviser, has been the investment manager to SBEF since July 1968 and to SBF since February 1972. (Smith Barney is the subadviser for each of SBEF and SBF and as such is compensated by SBA and not by SBEF or SBF.)

4. MMC, a registered investment adviser, has been the investment manager to NLR since February 1979, to TFM since April 1982 and to MBF since its commencement of operations in August 1986.

5. On June 3,1987, the directors and Trustees of the Funds, including the independent directors and Trustees, unanimously authorized entering into the interim agreements ("Interim Agreements") which were identical to the Former Agreements, including the fees payable by the Funds, except that any such fees or alternatively the costs incurred by the Advisers, were payable on a retroactive basis, subject to shareholder approval of new agreements and receipt of an order by the Commission. The directors and Trustees also caused new agreements ("New Agreements") to be submitted to the shareholders of the Funds (the proxy soliciting period for which commenced on the day following the Closing Date), and authorized the filing of an application for exemption from section 15(a) of the 1940 Act.

On July 17, 1987, the shareholders of the Funds approved the New Agreements between the Funds and their respective Advisers and subadvisers, at which time the New Agreements became effective.

6. When considering the Interim Agreements, the directors and Trustees of the Funds determined that any change in control of SBI as a result of the anticipated merger would not have a detrimental effect on the ability of the Advisers to provide the same advisory and other services as were then being provided to the Funds. There were no changes in the business, corporate structure, capitalization, or composition of senior management or personnel of SBI or its subsidiary Advisers as a result of the merger. Smith Barney remained autonomous as a subsidiary of Primerica, continuing to operate under the same name and under the same management. After the technical assignments, there were no changes in the investment advisory and other services provided to the Funds and the directors of all of the Advisers remained the same. Each Fund continued to receive the same services, as provided by the same personnel.

7. The negotiations for the Merger commenced in early May and their rapid culmination did not present the opportunity to secure prior approval of the new Agreements by shareholders of the Funds. In addition to the financial and other business terms of the Merger, Primerica,, NY Acquisition and SBI concluded, in light of the disruptions that could occur if a securities firm announced the existence of merger negotiations, that the negotiations and the terms of the anticipated Merger should be maintained on a strictly confidential basis. Expeditious consummation of the Merger following any public announcement was essential to assure that the integrity of the transaction was preserved. Accordingly, access to the knowledge that negotiations were underway was closely circumscribed by SBI and its affiliates. The Funds' management had less than one month from the date of the public announcement on May 27th until the Closing Date to convene Boards of Directors (Trustees) Meetings, to draft and file with the SEC proxy soliciting materials for meetings of shareholders of the Funds and to file the application.

8. Applicants filed the application seeking, to the extent necessary, permission for Advisers to: (i) Have served as investment advisers to the Funds, and for Smith Barney to have served as subadviser with respect to SBF and SBEF pursuant to the Interim Agreements (from June 19, 1987, until July 17, 1987); (ii) receive from each of the Funds, after an order of the Commission is issued, for the fees that were it not for the Merger, would have been payable under the Former Agreements, as further reduced by voluntary fee waivers. The fees subsequently determined for the Interim period were $1,520,924; (iii) as an

alternative to the said fees, receive amounts equal to the costs incurred by the Advisers during the Interim period in providing the services performed under the Interim Agreement, but in no event would such amounts exceed the fees otherwise payable under the Interim Agreements, as further reduced by voluntary fee waivers of the Advisers. Based on Smith Barney's fully costed allocation methodology contained in the application, the lesser of minimum costs or fees per Fund (or series) aggregated for all Funds (series) was $915,143 during the Interim Agreement.

10. Applicants state that the time between the filing of amendments to the application was expended on preparing the historical cost data and financial analysis included in the application. Simultaneous with the cost data research, the personnel for Applicants were also developing strategic planning for Smith Barney. In addition, the market break of October 19, 1987 put further strain on the same individuals who were called upon to respond and react to the effects of the market break.

11. The cost data submitted in the application consists of direct expenses and indirect expenses. The method of allocating, on a full costed basis, direct and indirect expenses of the Advisers with respect to their advisory services to the Funds is consistent with the method currently used by Smith Barney senior executives to monitor product profitability on an allocated basis. For a more complete description of Applicants' methodology, see pages 27–30 of the application.

12. Applicants shall not rely on any order of the Commission prior to its issuance as authority for the Advisers serving as investment advisers to the Funds.

Applicants' Legal Conclusions

1. Section 15(a)(4) is intended, in part, to protect an investment company and its shareholders from the trafficking in advisory contracts. The requested relief does not contravene the protection afforded by this section because the Merger was not contingent on either receipt of the relief requested in the application or shareholder approval of the New Agreements. Applicants submit that it would have served no useful purpose to await shareholder approval of the New Agreements prior to the Merger.

2. The exemption would be consistent with the policies of Rule 15a–4 under the 1940 Act. Applicants are unable to rely upon Rule 15a–4 because of the receipt of compensation from the assignment.

3. The rapid culmination of the merger negotiations did not present the opportunity to secure prior shareholder approval of the New Agreements.

4. Denying Advisers the lesser of fees or reimbursement of costs would be a harsh result and would not afford shareholders any extra protection. The Advisers were responsible for managing assets aggregating more than $4.9 billion pursuant to the Interim Agreements, but for which they are entitled to no compensation, including costs, by the terms of the Interim Agreements, absent the relief requested in the application. Management fees that SBA and MMC receive represent substantially all of their revenues.

5. The independent Directors and independent Trustees of the Funds determined that continuity of the Advisers' services to the Funds was advantageous to the Funds. Any change in the Advisers' operations may have had a disruptive effect on the Funds.

In evaluating the effect of the Merger on the Advisers' ability to continue to provide services to the Funds, the independent directors and independent Trustees received and considered information as to Primerica's business organization and financial resources, personnel and other matters. They considered it significant that the acquisition would have no material adverse effect on the Advisers' ability to provide services to the Funds.

6. The requested order will enable the Advisers to receive with respect to the Interim Agreement period the lower of fees or costs from the Funds, as set forth in the New Agreements and approved by shareholders. The terms of the Interim Agreements state that any payment is subject to the granting of a Commission order and shareholder approval of the New Agreements. The Advisers have borne the costs of preparing and filing the original application and all amendments thereto and the costs of the special meetings of shareholders, including the expenses of preparing, printing and mailing proxy statements to solicit shareholder approval of the New Agreements (except that only NLR bore the foregoing costs in connection with its annual meeting of shareholders, other than a portion of such costs allocable to consideration of NLR's proposed agreement which was paid by MMC).

7. It is in the public interest, in the interest of investors and otherwise consistent with the purposes of the 1940 Act that an investment company be able to continue to receive, despite circumstances that may be deemed to be an assignment of the contract, the uninterrupted services of its investment adviser, which performs pursuant to a contract previously approved by its shareholders.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 19932 Filed 8–31–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Exemption or Waiver; Iowa Traction Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that one railroad has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with certain requirements of the regulations entitled Hours of Service of Railroad Employees (49 CFR Part 228).

Iowa Traction Railroad Company (IAT)

FRA Waiver Petition Docket No. HS–88–21

The IAT seeks a permanent waiver of compliance with 49 CFR 228.9(a)(1), which requires that records maintained under Part 228 be signed by the employee whose time on duty is being recorded or, in the case of train and engine crews, signed by the ranking crew member. The IAT states that it seeks this waiver of the records requirements of the Hours of Service of Railroad Employees because it only employs two full-time employees that work from 8:30 a.m. to 5:30 p.m. with an hour for lunch, Monday through Friday. The IAT feels that the burden of recordkeeping and reporting is excessive and costly for the carrier's operation. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number HS–88–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief

Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before October 18, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.—5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 25, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc 88-19880 Filed 8-31-88; 8:45 am]

BILLING CODE 4910-06-M

Petitions for Exemption or Waiver; West Virginia Northern Railroad

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that six railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169), 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12-hour limitation.

West Virginia Northern Railroad (WVN)

FRA Waiver Petition Docket No. HS-88-15

The WVN seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The WVN states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The WVN provides service on over 17 miles of track from a connection with CSX Rail Transport at Tunnelton, West Virginia. Operations are based at Kingwood, West Virginia.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Tradewater Railway (TWRY)

FRA Waiver Petition Docket No. HS-88-16

The TWRY seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The TWRY states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help the TWRY's operation if it encountered unusual operating conditions or circumstances. The TWRY provides freight service on over 69 miles of track between Waverly and Princeton, all within the State of Kentucky. Interchange is made with CSX Rail Transport at Providence and with the Illinois Central Railroad at Princeton.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Maryland and Pennsylvania Railroad (MA&PA)

FRA Waiver Petition Docket No. HS-88-17

The MA&PA seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The MA&PA states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The MA&PA provides service on over 66 miles of track between York and Yoe, and from York to Hanover, which are located in the State of Pennsylvania.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

East Cooper and Berkeley Railroad (ECBR)

FRA Waiver Petition Docket No. HS-88-18

The ECBR seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The ECBR states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The ECBR provides service on over 15 miles of track between Cordesville and Charity Church, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this waiver.

Port Royal Railroad (PRYL)

FRA Waiver Petition Docket No. HS-88-19

The PRYL seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The PRYL states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that, if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The PRYL provides service on over 25 miles of track between Yemassee and Beaufort, South Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for the granting of this waiver.

Keokuk Junction Railway (KJRY)

FRA Waiver Petition Docket No. HS-88-20

The KJRY seeks this exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The KJRY states that it is not its intention to employ a train crew over 12 hours per day under normal operating conditions, but that if granted, this exemption would help its operation if it encountered unusual operating conditions or circumstances. The KJRY provides service on over 32 miles of track between Keokuk, Iowa and LaHarpe, Illinois.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for the granting of this waiver.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity

for oral comment since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS–87–20) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before October 18, 1988, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 25, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88–19881 Filed 8–31–88; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0461
Form Number: ATF Reporting Requirement 5110/11
Type of Review: Extension
Title: Marks and Labels on Containers of Distilled Spirits
Description: The marking, branding and labeling or containers of spirits by distilled spirits plants provide the data to identify, trace, and quantify the spirits
Respondents: Business and other for-profit, Small businesses or organizations
Estimated Number of Respondents: 254
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Managment and Budget, Room 3208, New Executive Office Building Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–19875 Filed 8–31–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 9041
Type of Review: New Collection
Title: Application for Electronic/Magnetic Tape Filing of Tax Year 1988 Form 1041, 1065, or 1120S
Description: Form 9041 will be filed by fiduciaries, partnerships, and S Corporations as an application to file their returns electronically or on magnetic tape; and by software firms, service bureaus, and electronic transmitters, to develop auxiliary services
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Response: 5 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 83 hours

OMB Number: 1545–0187
Form Number: 4835
Type of Review: Revision
Title: Farm Rental Income and Expenses
Description: This form is used by landowners (or sub-lessors) to report farm rental income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported
Respondents: Individuals or households, Farms
Estimated Number of Respondents: 407,719
Estimated Burden Hours Per Response: 25 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 172,680 hours

OMB Number: 145–0978
Form Number: None
Type of Review: Revision
Title: General IRS Customer Satisfaction Questionnaire (Short Form)
Description: The data collected will be used to get an indication of whether the IRS is providing satisfactory service to its customers, the taxpayers. This information will be used by IRS managers to determine if current programs and service are meeting taxpayers' needs. The need for further evaluation of our service and programs will be indicated by this effort.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 25,000
Estimated Burden Hours Per Response: 3 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,250 hours

OMB Number: 1545–1053
Form Number: 8709
Type of Review: Revision
Title: Exemption From Withholding on Investment Income of Foreign Government
Description: This form is used by foreign governments, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under code section 892. The withholding agent uses the information to

determine the appropriate withholding, if any.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 3,000
Estimated Burden Hours Per Response: 27 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 13,382 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management officer.
[FR Doc. 88–19876 Filed 8–31–88; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 26, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0938
Form Number: IRS Form 1120–IC–DISC, Schedule K and Schedule P
Type of Review: Revision
Title: Interest Charge Domestic International Sales Corporation Return—1988, and its Related Schedules K and P
Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (ID–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc., Schedule K (Form 1120–IC–DISC) is used to report income to shareholders.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 5,000
Estimated Burden Hours Per Response:
1120–IC–DISC—14 hours and 7 minutes
Schedule K (Form 1120–IC–DISC)—36 minutes
Schedule P (Form 1120–IC–DISC)—1 hour and 37 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 82,897 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–19877 Filed 8–31–88; 8:45 am]
BILLING CODE: 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 170
Thursday, September 1, 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

August 29, 1988.

PLACE: Biltmore Hotel, 506 South Grand Avenue, Los Angeles, CA 90071.

DATE AND TIME: Friday, September 9, 1988, 3:00 p.m.–5:30 p.m.

STATUS OF MEETING: Open (matters I–X) and Closed (matter XI).

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Status Report: Federal Protection for Handicapped Infants
V. SAC Report: "Civil Rights Issues in Birmingham"
VI. SAC Report: "Segregation in Louisville and Lexington Public Housing"
VII. SAC Report: "The Status of Civil Rights in Louisiana"
VIII. SAC Report: "Civil Rights Issues in Wyoming"
IX. SAC Recharters: Maryland and New York
X. SAC Interim Appointment: North Carolina
XI. Executive Session closed to the public at the end of the public meeting to discuss internal personnel matters

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,

Solicitor.

[FR Doc. 88–19949 Filed 8–30–88; 11:19 am]

BILLING CODE 6335–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 29, 1988.

CHANGE IN PREVIOUS ANNOUNCEMENT: Vol. 53, No. 167, August 29, 1988.

TIME AND DATE: 10:00 a.m., Wednesday, August 31, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Paula Price* v. *Monterey Coal Company*, Docket No. LAKE 86–45–D. (Issues include whether the judge erred in dismissing the discrimination complaint.)

It was determined by a unanimous vote of Commissioners that this meeting be closed and that no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–19966 Filed 8–30–88; 11:20 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Tuesday, September 6, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive dicussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed project regarding development of an electronic payments production system.

Discussion Agenda

2. Proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to implement the limitations placed on gradfathered nonbank banks by the Competitive Equality Banking Act of 1987. (Proposed earlier for public comment; Docket No. R–0637)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–19979 Filed 8–30–88; 1:24 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:

TIME AND DATE: Approximately 10:30 a.m., Tuesday, September 6, 1988, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented to the Senate Committee on Banking, Housing, and Urban Affairs regarding consumer protection provisions in H.R. 5094, the Depository Institutions Act of 1988.
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–19980 Filed 8–30–88; 1:24 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 7, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of testimony on banking issues in H.R. 5094, the Depository Institutions Act of 1988.
2. Proposed Federal Reserve Bank salary structure adjustments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before the meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20022 Filed 8–30–88; 3:28 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on August 30, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Tuesday, September 6, 1988.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed project regarding development of an electronic payments production system.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20021 Filed 8–30–88; 3:28 pm]

BILLING CODE 6210–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, September 12, 1988, in Washington, DC, and at 8:30 a.m. on Tuesday, September 13, 1988, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the September 12 meeting is closed to the public. The September 13 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At its meeting on August 1, 1988, the Board voted to close to public observation its meeting scheduled for September 12, 1988, to consider a temporary mail classification change affecting certain second-class mail matter (See 53 FR 30511, August 12, 1988). By telephone vote on August 29, 1988, the Board voted to add to the September 12, 1988, closed session agenda, consideration of additional funding for the Mid-Island, New York, Mail Processing Facility.

Agenda

Monday Session

September 12—1:00 p.m. (Closed)

1. Consideration of Temporary Mail Classification Change Affecting Certain Second-Class Mail Matter. (Mr. Heselton)
2. Mid-Island, New York, Mail Processing Facility Increased Funding Requirements. (Mr. Smith)

Tuesday Session

September 13—6:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 1–2, 1988.
2. Remarks of the Postmaster General.
3. Postal Rate Commission FY 89 Budget.
4. U.S. Postal Service Tentative FY 90 Revenue Forgone Appropriation Request. (Mr. Coppie)
5. Review of Legislative Matters and Government Relations.
6. Tentative Agenda for October 3–4, 1988, Meeting in Richmond, Virginia.

David F. Harris,

Secretary.

[FR Doc. 88–20023 Filed 8–30–88; 3:40 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE BOARD OF GOVERNORS

Vote To Close Meeting

By telephone vote on August 29, 1988, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for September 12, 1988, at United States Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting will involve consideration of a management proposal to increase funding requirements for the Mid-Island, New York, Mail Processing Facility.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, McConnell, Nevin, Pace, Ryan and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 88–20024 Filed 8–30–88; 3:40 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 8, 1988, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Repayment of the RUIA Loan
(2) Proposal to Reorganize the Bureau of Retirement Claims
(3) Proposed Part 203, Employees Under the Act, of the Board's Regulations
(4) Proposed Disability Regulations
(5) Registration for Unemployment Benefits by Mail
(6) Proposed Changes in the RUIA Regulations
(7) Payment of Unemployment Insurance During Work Stoppages under the Federal Railroad Safety Act

Portion Closed to the Public

(A) Appeal of Nonwaiver of Overpayment, Ora R. Dicks
(B) Appeal from Referee's Denial of Disability Annuity, Richard O. Carmack
(C) Appeal from Referee's Denial of Disability Annuity, Adam J. Shakir
(D) Freels v. U.S. Railroad Retirement Board

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS NO. 386–4920.

Dated: August 29, 1988.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–20009 Filed 8–30–88; 3:27 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register
Vol. 53, No. 170
Thursday, September 1, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80745-8145]

Groundfish of the Gulf of Alaska

Correction

In proposed rule document 88-18809 beginning on page 31728 in the issue of Friday, August 19, 1988, make the following corrections:

1. On page 31730, in the second column, under **Classification**, in the second paragraph, in the fourth line, remove "MRM".

PART 672—[CORRECTED]

2. On the same page, in the third column, in amendatory instruction 2, in the second line, remove "MRM".

§ 672.23 [Corrected]

3. On page 31731, in the first column, in § 672.23(b), in the sixth line, remove "MRM".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-559-000 et al.]

Niagara Mohawk Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 88-19104 beginning on page 32100 in the issue of Tuesday, August 23, 1988, make the following correction:

On page 32101, in the first column, under **6. GWF Power Systems Company, Inc.**, the first line should read:

"[Docket No. QF85-588-002 *et al.*]"

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3453/R978; FRL-3428-9]

Pesticide Tolerances for Bifenthrin

Correction

In rule document 88-18375 beginning on page 30676 in the issue of Monday, August 15, 1988, make the following correction:

PART 180—[CORRECTED]

§ 180.442 [Corrected]

On page 30678, in the second column, in § 180.442, the fifth line should read "trifluoro-1-propenyl)-2,2-".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62035G; FRL 3366-6]

Polychlorinated Biphenyls in Electrical Transformers

Correction

In rule document 88-16194 beginning on page 27322 in the issue of Tuesday, July 19, 1988, make the following correction:

On page 27326, in the third column, in the second complete paragraph, in the eighth line, "§ 761.3](a)(1)(xv)(D)" should read "§ 761.30(a)(1)(xv)(D)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0242]

Hydrocortisone Acetate and Pramoxine Hydrochloride; Drugs for Human Use; Proposal To Withdraw Approval; Opportunity for a Hearing

Correction

In the correction to document 88-14876 appearing on page 27450 in the issue of Wednesday, July 20, 1988, make the following correction:

In the third column, in the first paragraph, in the second line, the page number should read "25013"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0159]

IOLAB® Intraocular; Premarket Approval of Models 85JS, 85JM, and 85JL Anterior Chamber Intraocular Lenses

Correction

In notice document 88-16300 appearing on page 27400 in the issue of Wednesday, July 20, 1988, make the following correction:

In the second column, under **Opportunity for Administrative Review**, in the sixth line, "360e(b)" should read "360e(g)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Revised Chapter in Regulatory Procedures Manual; Recall Procedures; Availability

Correction

In notice document 88-16297 beginning on page 27400 in the issue of Wednesday, July 20, 1988, make the following correction:

On page 27401, in the first column, under **SUPPLEMENTARY INFORMATION**, in the 13th line, "or" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-940-08-4220-11; NM NM 056534, NM NM 016634, NM NM 0556981, NM NM 10388, NM NM 12780, NM NM 46827]

Proposed Continuation of Withdrawals; Baca Recreation Area et al., New Mexico

Correction

In notice document 88-17607 appearing on page 29392 in the issue of Thursday, August 4, 1988, make the following correction:

In the second column, under *Elder Canyon Administrative Site*, the second line should read "Sec. 35, NW¼NE¼N W¼, NE¼NW¼NW¼."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 25]

RIN 2127-AC45

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

Correction

In rule document 88-18537 beginning on page 31007 in the issue of Wednesday, August 17, 1988, make the following correction:

PART 571—[CORRECTED]

On page 31009, in the first column, in amendatory instruction 2, the first line should read: "2. Paragraphs (b)(1), (b)(2), and (b)(3) of".

BILLING CODE 1505-01-D

federal register

Thursday
September 1, 1988

Part II

National Labor Relations Board

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry; Second Notice of Proposed Rulemaking

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

AGENCY: National Labor Relations Board.

ACTION: Second notice of proposed rulemaking.

SUMMARY: This Second Notice of Proposed Rulemaking provides for appropriate bargaining units for various types of facilities in the health care industry. The Board has determined that establishing bargaining units by rulemaking will better effectuate the purposes and policies of the National Labor Relations Act than continuing lengthy and costly litigation over the issue of appropriate bargaining units in each case.

DATE: Comments must be received on or before October 17, 1988.

ADDRESS: Comments should be submitted in eight copies to: Office of the Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

FOR FURTHER INFORMATION CONTACT: Curtis A. Wells, Associate Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: The following is an outline of the contents of this Notice:

I. Background
II. Validity and Desirability of Rulemaking
III. Standard to be Applied in Determining Appropriate Units
IV. Two Units: All Professionals/All Non-Professionals
V. Registered Nurses
VI. Physicians
VII. Other Professionals
VIII. Technicals
IX. Skilled Maintenance
X. Business Office Clericals
XI. Other Non-Professionals
XII. One Hundred Bed Distinction
XIII. Nursing Homes
XIV. Specialized Hospitals
XV. Partially Organized Facilities
XVI. Facilities Covered
XVII. Decisions to Which Rule Applies
XVIII. Non-Conforming Stipulations
XIX. Combined Units
XX. Extraordinary Circumstances Exception
XXI. Proliferation
XXII. Docket
XXIII. Regulatory Flexibility Act
XXIV. Regulatory Text
XXV. Dissenting Opinion

I. Background

In our original Notice of Proposed Rulemaking (NPR), we set forth at considerable length the reasons prompting the Board to embark on rulemaking to establish appropriate bargaining units in the health care field. These reasons are set forth fully at 52 FR 25142–25145, July 2, 1987.

Following the Notice, the Board conducted the three hearings announced in the Notice, as well as a fourth hearing requested by several interested parties and announced at 52 FR 29038. At these hearings, all who wished to testify were given an opportunity to do so, and all who wished to ask questions of the various witnesses were given that opportunity. Summaries (cited below as WS) submitted in advance by most of the prospective witnesses facilitated the questioning process.

The first hearing was held in Washington, DC on August 17 and 18, 1987; 20 witnesses appeared, and 496 pages of testimony were taken.

The second hearing was in Chicago, Illinois on August 31 and September 1, 1987; 27 witnesses appeared, and 521 pages of testimony were taken.

The third hearing was in San Francisco, California on September 14, 15, and 16, 1987; 39 witnesses appeared, and 762 pages of testimony were taken.

The final and longest hearing was back in Washington, DC on October 7, 8, 9, 13, 14, 15, and 16, 1987; 58 witnesses appeared, and 1766 pages of testimony were taken.

The comment period, which was originally to last through October 30, 1987, was thereafter extended three times upon the request of various parties [52 FR 36589, 43919, and 47029]. The evidence received by the Board at the hearings and during the comment period substantially exceeded, in both detail and exhaustiveness, what the Board had expected. The transcript of hearing totals 3545 pages, and the 144 individuals who came in person to testify included employees from virtually every broad classification under consideration: registered nurses, physicians, other professionals, technicals, skilled maintenance employees, service and related employees, and business office clericals. In addition, there were union and management negotiators from around the country; a number of professors of nursing, health care management, and other academic disciplines; hospital administrators; health care associations such as the American Medical Association (AMA); representatives of numerous unions including the American Federation of Labor and Congress of Industrial Organizations (AFL), Service Employees International Union (SEIU), International Brotherhood of Teamsters (IBT), United Food and Commercial Workers International Union (UFCW), International Union of Operating Engineers (IUOE), American Nurses Association (ANA) and several of its state associations, Hospital Employees' Labor Program of Metropolitan Chicago (H.E.L.P.), United Nurses' Association of California (UNAC), Communication Workers of America (CWA), Union of American Physicians and Dentists (UAPD), New York State Federation of Physicians and Dentists; and representatives of various employer groups such as the League of Voluntary Hospitals and Homes of New York, American Hospital Association (AHA), New Jersey Hospital Association (NJHA), Metropolitan Chicago Healthcare Council, Missouri Hospital Association, Ohio Hospital Association, Affiliated Hospitals of San Francisco, California Association of Hospitals and Health Systems, Associated Hospitals of the East Bay, Hospital Council of Southern California, American Health Care Association, and Hospital Council of Western Pennsylvania.

During the comment period, the Board received written comments from 315 individuals and organizations, representing diverse points of view and offering information to supplement what the Board had learned from the oral testimony. These comments alone totalled approximately 1500 pages.

In addition, following the close of the hearings, lengthy comments in the nature of briefs were submitted by the AHA; the ANA; the Building and Construction Trades Department of the AFL–CIO; the IUOE; and the AFL, on behalf of SEIU; National Union of Hospital and Health Care Employees (NUHHCE); Local 1199, Drug, Hospital and Health Care Employees Union, Retail, Wholesale, Department Store Union (Local 1199); Federation of Nurses and Health Care Professionals, American Federation of Teachers (AFT); American Federation of State, County and Municipal Employees (AFSCME); CWA; International Union, United Auto Workers; UFCW; and United Steelworkers of America.

The Board is gratified at, and appreciative of, the interest shown in these proceedings by all segments of the industry, including its employees and their representatives. The Board has spent a great deal of time reviewing the evidence collected and the comments received, and believes it is now far better qualified to resolve the issues

raised in the Notice of Proposed Rulemaking.

On July 1, 1988, the Board met in open session to discuss further the issue of appropriate bargaining units in the health care industry. The rules tentatively decided upon in that meeting and proposed below have been derived from our analysis of the empirical evidence and comments received during the rulemaking proceeding. The rules now proposed differ in several important respects from the rules proposed in our original Notice of Proposed Rulemaking. Because this is the Board's first major effort at substantive rulemaking, and because the Board is desirous of giving all interested parties a further opportunity to comment on the proposed rules, including the substantial revisions, we have provided for another period of comment. See, e.g., Note, *The Need for An Additional Notice and Comment Period When Final Rules Differ Substantially From Interim Rules*, 1981 Duke L.J. 377 (1981). This Second NPR contains a lengthy Supplementary Information Sec., addressing the major issues presented and containing numerous citations to the rulemaking record. We wish to emphasize that these citations are merely illustrative of the testimony upon which we relied and are not represented as the entirety of the record. We have carefully studied the complete rulemaking record, including the transcript, the witnesses' statements, the comments and briefs, and the exhibits, and have based our proposed rules on the entirety of this record, and not solely on the testimony specifically cited.

II. Validity and Desirability of Rulemaking

A. Introduction

The Board's statutory authority to engage in rulemaking is derived from section 6 of the National Labor Relations Act, which expressly gives the Board power to make "such rules and regulations * * * as may be necessary to carry out the provisions of this Act * * *."

In response to several commentators' concerns (e.g., AHA Br. 48; Comment 289, Ross WS Albanese, Charter Medical) and also to the concern expressed by our dissenting colleague, the fact that the language of section 9(b) requires a separate determination "in each case" does not in our opinion mean that the Board cannot promulgate rules to assist it (See discussion at 52 FR 25144.) It has long been the Board's practice to formulate "rules" to guide it in representation matters. See, e.g., the "contract bar rules," discussed in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); the "Excelsior Rule," enunciated in *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); and the *Peerless Plywood* rule, 107 NLRB 427, 429 (1953). Although these rules were formulated by adjudication rather than APA rulemaking, and a majority of the Supreme Court in *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969), upheld the validity of the particular rule (the *Excelsior* rule) as applied to the respondent in that case, the plurality implied, and the two dissents explicitly stated, that the Congressionally-preferred course for such prospective pronouncements would be APA rulemaking. To our knowledge, no court or academic commentator has ever made the contrary suggestion, that section 9(b) forbids utilization of APA procedures to formulate generally applicable representation case rules. As Kenneth Culp Davis observed with specific reference to the language of section 9(b), "The mandate to decide 'in each case' does not prevent the Board from supplanting the original discretionary chaos with some degree of order, and the principal instruments for regularizing the system of 'deciding in each case' are classifications, rules, principles, and precedents. Sensible men could not refuse to use such instruments and a sensible Congress would not expect them to." Davis, *Administrative Law Text* 145 (3d ed. 1972).[1]

In the Notice of Proposed Rulemaking, we set forth at length our reasons for embarking on this procedure in the health care industry. Initially, we noted that thirteen years had elapsed since the health care amendments were passed, but none of the Board's previously enunciated doctrinal formulas for determining appropriate health care units had yet met with general judicial acceptance. Moreover, in numerous cases it had proven necessary to engage in lengthy, costly litigation over the appropriate bargaining unit or units. In retrospect, it appeared to the Board that there had been relative uniformity of workforce configurations and job classifications from facility to facility, and even under adjudication the various Board members had reached virtually identical results from case to case. Hence, it did not appear that what some have termed "sensitive, case-by-case adjudication" was serving any useful purpose. The Board also acknowledged that for years it had been urged to engage in APA rulemaking by numerous scholars and judges. In making the decision to engage in rulemaking, the Board expressed the expectation that this type of proceeding would produce the type of empirical evidence most appropriate for a determination as to which of the requested groups warranted separate bargaining units, while not creating such undesirable results as excessive proliferation, interruption in the delivery of health care services, jurisdictional disputes, wage whipsawing, and the like. A fuller exposition of the Board's initial reasons for undertaking rulemaking can be found at 52 FR 25143–145.[2]

Following its issuance of a Notice of Proposed Rulemaking, the Board permitted the parties to comment on this matter, and to present testimony in support of their positions. A significant number of health care providers, including the American Hospital Association, opposed the Board's rulemaking efforts. We have carefully considered all their arguments and the evidence submitted in support thereof.

B. Industry's Position

1. *Dynamics and diversity of health care industry.* One argument advanced by a number of employers in opposition to rulemaking was that the dynamics and diversity of the industry preclude it. Thus, the imposition of diagnostic related groups (DRGs) has required new efforts at cost containment (WS Rhodes [AHA] at 1,4; Comment 108, Bonaventure; Comment 130, St. Vincent's Hosp. Ala; Comment 193, Dolly Vinsant Memorial Hospital; Comment 268, Kane). Inflationary pressures have increased while revenues, particularly for in-patient stays, have either decreased or have been governed by ceilings. (Comment 76, South Suburban Hosp; AHA Br. 3–4; Comment 81, Jordan Hospital; Comment 146, Kennebec Valley Medical Center.) Severe shortages in certain categories of

[1] See also *Continental Web Press v. NLRB*, 742 F.2d 1087, 1093–94 (7th Cir. 1984), in which Judge Posner suggests that the Board's decision in that case with respect to lithographic units would have been more acceptable had the Board used "its dormant rulemaking powers;" and *NLRB v. Majestic Weaving Co.*, 355 F.2d 854, 859–61 (2d Cir. 1966) (Friendly, J.), cited by the court in *Continental Web Press*.

[2] In the NPR, we observed that a number of states, including Florida and Massachusetts, had engaged in rulemaking to formulate appropriate bargaining units for their own employees. 52 FR 25145, fn. 39. We take official notice that, as of November 1987, of the 22 states with comprehensive collective bargaining legislation for state employees, ten (Alaska, California, Connecticut, Florida, Iowa, Maine, Massachusetts, Michigan, New York and Ohio) set their units by administrative rulemaking, and four (Hawaii, Minnesota, Nebraska, and Wisconsin) designate them by statute. Only eight (Illinois, Montana, New Hampshire, New Jersey, Oregon, Pennsylvania, Rhode Island and Vermont) establish units through case-by-case adjudication.

employees have required hospitals to be flexible, which, it is alleged, is inconsistent with the relative inflexibility of rules (Comment 133, Beth Israel Hosp.).

At the same time, there has developed an increasing diversity in hospitals and the services they provide (King, 4232; Comment 19, Johnson City Medical Center Hosp.). Thus, hospitals of all types and sizes are establishing new types of related health care services on outpatient as well as inpatient bases (AHA Br. 5; Dauner, 3217; Comment 44, McDonough District Hosp.; Comment 71, St. Mary Hosp.; Comment 76, South Suburban Hosp.; Comment 174, High Plains Baptist Hosp., etc.). Many hospitals are expanding their markets by developing a number of specialty units, such as arthritis units (AHA Br. 7, citing *Modern Healthcare*, July 31, 1987, p. 42); intensive cardiac care, intensive medical/surgical, and neonatal units (Comment 71, St. Mary's Hosp.); trach units, dialysis units, etc. (Comment 78, Greater Cincinnati Hosp. Council). Another change is that hospitals are using part-time workers in increasing numbers to accommodate rapid fluctuations in inpatient census and reduction in full-time employee schedules (AHA Br. 7). One large group of proprietary hospitals, National Medical Enterprises, has extensively analyzed services provided in its hospitals to determine what allegedly professional services could be handled by non-professionals; in some of its facilities, it has implemented the "caregiver" concept to replace traditional job labels, within the limits of the classifications' competency. (Donnelly, 4063–80.) It is alleged that rulemaking is not suited for today's diverse and complex institutions (AHA, King, 4232).

2. *Changing structure.* The industry's witnesses presented evidence that the structure of the industry is changing in that hospitals are becoming parts of larger systems encompassing intermediate care facilities, urgent care centers, nursing homes, surgery centers, clinics, etc. (Rhodes, 9–11; NJHA, 320–324, 325; Dauner, 3194; Comment 66, Holy Cross Health Sys.; Comment 203, Deaconess Hosp.). It is alleged that an inflexible rule will impede the Board's ability to respond quickly to rapid changes in the industry (AHA, pos. st. 2). It is claimed that, because of the myriad of recent changes, this is an inopportune time to engage in rulemaking, which would be better done after the industry has had time to settle down from the current changes (Robfogel, Chi II 233).

3. *Prospects for litigation.* A number of representatives of the industry contended that rulemaking will not reduce the amount of litigation, partly because it will still be unclear into what category various occupations fall (Rhodes, 14; Stickler, 49; Owley, 4379–80; Comment 213, Mulhall, AtlantiCare Medical Center); there will be continuing litigation over the "special situations" exception (Comment 148, Moeller, Mississippi Hosp. Assn.); and, in general, the industry anticipates more litigation rather than a conservation of agency resources (Stickler, letter dated June 19, 1987, RM 2–10; Comment 289, Ross).

C. Opposing Position

1. *Litigation.* Though the vast bulk of industry commentators opposed rulemaking, two did not oppose it. Thus, one hospital agreed with the observation that unit determinations in the industry were confused and hard to follow, deeming rulemaking a "welcome relief." (Comment 5, Kane, Holy Redeemer Health System.) Kaiser also does not oppose rulemaking, having observed protracted litigation elsewhere in the industry. (Comment 313, addendum to Kaiser comment.) One student with prior experience as a department head in several hospitals observed that rulemaking may help reduce costs in the industry, so that parties can spend fewer dollars on legal maneuvering and less time on organizing campaigns, leading to more industrial stability. (Comment 122, Shumlas.)

The unions participating in these proceedings supported the Board's rulemaking efforts. (ANA Br. 192–93; New York State Federation of Physicians and Dentists, 79–80; Health Professionals and Allied Employees of New Jersey (HPAE), 122, 127; Union of American Physicians and Dentists, 3649; SEIU, 5155; IUOE, Br. 106; IBT, Saporta, 5101.) They acknowledged the protracted litigation that had theretofore ensued (e.g., Saporta, 5141–42; HPAE, 122, 24; Minnesota Nurses Assoc., WS Patek; Federation of Nurses and Health Profs, WS Owley & 4379–80), producing lengthy delays and great difficulties in organizing (e.g., Lumpkin, 84–85; Nathan, 79–80; Union of American Physicians and Dentists, 3649). One management-side consultant is reported to have admitted that such delays were often part of management's strategy in contesting health care units:

> At a workshop on unions, Raymond Mickus, president of Raymond F. Mickus & Associates in Bannockburn, Ill., predicted that the NLRB rules will spark much more union activity. . . . Under the rules there will be much, faster elections, he said, adding that employers won't have access to hearings or briefs which used to delay the proceedings * * *. There also will be less costs for the unions because they will not have to spend the "megabucks" associated with the hearing process, he said. (Current Developments, BNA Daily Labor Report, Aug. 6, 1987, p. A–2.)

Shortly thereafter, another health care industry representative is reported to have said something very similar: "Delaying representation elections. The greater the time between the initial union petition and the election the less chance there is that the union will win." (Metzger, vice president of labor relations for Mount Sinai Medical Center, discussing management's strategy, though not necessarily advocating it himself. Reported in Current Developments, BNA Daily Labor Report, Sept. 29, 1987.)

2. *Diversity.* There is some variation between institutions. No two hospitals are exactly alike, but this is true of all institutions. The relevant question, however, is whether, despite surface differences, there are such similarities that certain institutions may properly be grouped as a class. AHA data from 1986 show that while there are a number of different types of health care providers, the overwhelming majority of private, acute care hospitals are general medical and surgical hospitals. Of the 4,381 registered, private acute care hospitals in the U.S., almost 90% are classified by AHA as general hospitals; less than 9% are classified as psychiatric. Of the general hospitals, 98% are medical and surgical hospitals, while only 2% are pediatric, obstetric, or rehabilitation hospitals. (AFL Exh. 7,8.) Inpatient activity accounts for 84% of hospital revenues, and 88% of inpatient beds are allocated to general medical and surgical care, obstetrics, pediatrics, and intensive care. (AFL Exh. 9,10.) The unions contend that the industry has not shown that such diversity as does exist is reflected in different functions for business office clericals, skilled maintenance employees, unskilled service workers, etc. at the different types of facilities.

The unions concede the presence of cost pressures which have changed the climate in which hospitals must operate today (AFL Br. 134; WS Berliner; Comment 293(i), Feldsine). However, they argue that change is endemic in the health care field, and contend that recent changes are not qualitatively different from changes brought about by the advent of private health insurance or introduction of Medicare and Medicaid, equally profound and dramatic changes (Kennedy, 5549–50). As reflected in the

testimony about particular job classifications. DRGs are an accounting and financing mechanism that has nothing to do with the organization of the hospital labor force, and that has not resulted in employees performing jobs that were traditionally performed by other groups of employees (Kennedy, 5551–53; Berliner, 5628–29). In fact, business office clericals' skills have been upgraded because of increased complexity of their work caused by financial pressures (Berliner, 5600). The unskilled workforce has become even less skilled and more vulnerable to layoffs caused by financial shortfalls (Berliner, 5603–04). Similarly, technical employee ranks have declined in the least skilled technical positions while increasing in the most skilled positions as a result of industry changes (WS Berliner at 11–12; WS Schoen at 14–15). Skilled maintenance employees continue to maintain the physical plant (AFL Br. 132). Neither has the role of RNs changed; they continue to provide direct care to patients and clients as in the past (ANA Br. 163).

3. *Changing structure.* There was evidence that, at least in California, the trend toward consolidation of ownership and management of hospitals into multi-hospital organizations appears to have ended (AFL Exh. 17 at p. 2, from California Assn. of Hospitals and Health Systems Report). Further, corporate mergers and larger organizational changes have not affected relationships between traditional job classifications; rather, the changes are in the corporate officers, locus, and method of corporate decision-making (Federation of Nurses and Health Profs, WS Owley; Patek, Chi I 48; Twomey, 126–127). In any event, the proposed rule does not purport to address the issue of the appropriateness of a single facility when an employer owns a number of facilities, which the Board will continue to address through adjudication. *Manor Healthcare Corp.*, 285 NLRB No. 31 (Aug. 6, 1987).

D. Conclusion

1. *Agency discretion.* The choice between deciding an issue through adjudication or APA rulemaking is, in the final analysis, within the informed discretion of an administrative agency. *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *NLRB v. Children's Baptist Home*, 576 F.2d 256, 260 (9th Cir. 1978); *NLRB v. St. Francis Hospital of Lynwood*, 601 F.2d 404, 414 (9th Cir. 1979). Here, we have carefully reconsidered our initial decision in light of all the evidence adduced at the hearings. After examining all this evidence, we remain convinced that rulemaking for establishing appropriate bargaining units in health care institutions is both fair and desirable. The record of these proceedings has supported and amplified our original reasons, set forth in our first NPR, for engaging in rulemaking.

2. *Past adjudicatory decisions.* Our adjudicatory decisions as to appropriate units in the health care industry, where the facts of each case were painstakingly examined in numerous lengthy and costly representation case proceedings, have been remarkably uniform in results, varying only when the Board changed doctrinal formulations, e.g., from "community" to "disparity" of interests. (NLRB Exh. 5, revised.) Thus, for example, from 1975 to 1984, despite lengthy adjudicatory proceedings the Board found RN units appropriate in 24 out of 25 published cases;[3] technical units appropriate in 18 out of 18 cases; business office clerical units appropriate in 8 out of 8 cases; etc. Though adjudication led to varying results for skilled maintenance units, that was largely a function of a single Board member, Member Jenkins, reaching different results on different records. Other members were, individually, remarkably uniform, despite alleged differences in the records. E.g., Member and Chairman Fanning found the separate maintenance unit appropriate 29 out of 29 times; Chairman Murphy, 26 out of 26 times. Continuing to determine appropriate units in this way seems unproductive, especially considering the lack of universal judicial approval of any single doctrinal approach. (See NPR, 52 FR 25143.)

3. *Financial constraints.* It cannot be denied that health care institutions are at this time operating under serious financial constraints. However, the evidence fails to disclose that these constraints have significantly changed the manner in which individual employee classifications perform their specialties or relate to one another. For example, the record shows that maintenance employees continue to maintain the physical facilities, and RNs continue to provide direct patient care under state nursing practice acts. If anything, the work of the business office clericals has been shown to have become more specialized and discrete, due to the increasing complexity of reimbursement arrangements, and also the increasing use of computers and word processing equipment. It is our judgment that the increased predictability which rulemaking will bring to the process of determining bargaining units will, in the long run, be a resource saver and, hence, result in cost savings not only for the Board but also for health care institutions as well as for employee organizations. Money expended on the *procedure* of determining appropriate units is not productively spent, except insofar as it leads to a greater understanding by the Board of the realities of the workplace; we believe the understanding of the health care industry we have achieved through this rulemaking proceeding has been greater than it was through adjudication, where each party presented a very narrow view of the evidence in order to achieve victory in that particular case. Lastly, insofar as adjudication enabled employers to delay and in that sense save additional costs that might be associated with unionization, we do not think that is an appropriate factor to be considered by the Board in support of continuing adjudication.

4. *Diversity of institutions.* Just as this proceeding has not shown that new cost constraints have made rulemaking inappropriate, neither do we find that any new diversification of institutions has had this result. Such diversity as exists has not been shown to be sufficiently significant to preclude uniform treatment for purposes of establishing the general contours of appropriate bargaining units [4] for acute care hospitals in all but truly extraordinary facilities. In fact, one witness, the Vice President of Human Resources, Hospital Council of Western Pennsylvania, testified that, even beyond acute care facilities, "the delivery of health care and the functional integration of services of those providing the care is similar if not nearly identical throughout the health care industry." (Cammarata, 4394). That same witness pointed out that this similarity in the way health care is delivered is "indeed mandated by various accreditation agencies throughout the health care field" (WS Cammarata at 3). The evidence discloses that the vast numbers of hospitals still perform acute care; insofar as other diverse facilities have developed, such as ambulatory facilities, freestanding emergency centers, etc., these will be considered *infra*, and in our definition of the types of facilities

[3] The sole exception was *Mount Airy Psychiatric Center*, 253 NLRB 1003 (1981), involving a psychiatric hospital. In each category, unpublished cases exhibited the same uniformity of result.

[4] See Subrin, *Conserving Energy at the Labor Board: The Case for Making Rules on Collective Bargaining Units*, 32 Lab. L.J. 9 (1987), at 105–108.

covered by this rulemaking or, alternatively, excluded. Recognizing the diversity of facilities other than acute care hospitals and nursing homes, as well as our limited experience with them, the original NPR excluded such other facilities from consideration in the rulemaking proceeding. These other health care facilities continue to be excluded from coverage.

5. *Litigation.* As described above, the Board anticipates that rulemaking will ultimately result in less, rather than more, litigation about the boundaries of appropriate units. It is acknowledged that there will still be litigation about the placement of individual job classifications within the broadly defined appropriate units. This was referred to in our initial NPR (52 NPR 25146), and in the proposed new rule itself (§ 103.30(a)); the Board does not see this as a reason not to engage in rulemaking in order first to establish the larger boundaries of the appropriate units. The Board believes it may well be legally necessary, and in any event is wise, to retain an exception for extraordinary circumstances. However, the Board intends to define that exception narrowly, so that it cannot be used as an excuse for unnecessary litigation and delay. See section XX, The Extraordinary Circumstance Exception, *infra.*

6. *Flexibility.* The Board's engaging in rulemaking has no logical connection with the industry's retention of complete flexibility in responding to the needs of the times. Rulemaking is rather a response to a perception that the industry's workforce is susceptible to rules of general applicability about the contours of bargaining units. Health care providers remain as free as they ever were to respond to external events except, of course, as limited by the constraints of any collective-bargaining obligations that may result from unionization; that, however, is a policy set by Congress, not the Board. If, for some reason we cannot now foresee, employers' flexibility to respond is inhibited, any party could, of course, petition for amendment or repeal of the rules, or the issuance of new rules. Board's Rules and Regulations, § 102.114.

7. *Other considerations.* Our colleague dissents and would not engage in rulemaking. However, were we to continue to decide the appropriateness of units in acute care hospitals solely by adjudication, we would not have the advantage of the great mass of evidence presented to us in this rulemaking proceeding. Indeed, the production of relevant information is one of the chief advantages of rulemaking over adjudication. In addition, as noted above, adjudication itself has resulted in non-fact-sensitive, virtually uniform results, but at great cost in terms both of time and money. These problems, which we have observed in appropriate unit adjudications in this industry since the 1974 amendments, would not necessarily disappear, even were the Supreme Court to grant certiorari and endorse the "community of interests," "disparity of interests," or some other standard. Lengthy hearings would still be required, and the Supreme Court is unlikely to involve itself in particularized, detailed factual inquiries over various appropriate unit determinations. Finally, it is by no means certain that the Supreme Court would grant certiorari on this issue, having declined to do so in *NLRB v. Mercy Hospital Association,* 606 F.2d 22 (2d Cir. 1979), cert. denied 445 U.S. 971 (1980). On another occasion, the Solicitor General refused to file petitions for certiorari, despite the Board's request that he do so, in *NLRB v. Frederick Memorial Hospital,* 691 F.2d 191 (4th Cir. 1982), and *NLRB v. HMO International,* 678 F.2d 806 (9th Cir. 1982). The court in the most recent relevant case, *IBEW, Local Union No. 474, AFL–CIO v. NLRB,* 814 F.2d 697 (D.C. Cir. 1987), remanded to the Board for further consideration, leaving any petition for certiorari susceptible to the argument that the court's disagreement with the Board's result was in any event not final.

III. Standard To Be Applied in Determining Appropriate Units

The Supreme Court has acknowledged on many occasions since the Act's passage that, under section 9, the Board possesses broad discretion to determine employee units "appropriate" for the purposes of collective bargaining.[5] Of course, even the Board's discretion is not without limits; if the Board's decision as to appropriate unit "oversteps the law," it must be reversed.[6] Within this limit, however, the Supreme Court has noted that any decision as to appropriate units "involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed." [7]

It has been observed that, in exercising its discretion to determine appropriate units, the Board must steer a careful course between two undesirable extremes: If the unit is too large, it may be difficult to organize, and, when organized, will contain too diversified a constituency which may generate conflicts of interest and dissatisfaction among constituent groups, making it difficult for the union to represent; on the other hand, if the unit is too small, it may be costly for the employer to deal with because of repetitious bargaining and/or frequent strikes, jurisdictional disputes and wage whipsawing, and may even be deleterious for the union by too severely limiting its constituency and hence its bargaining strength.[8] The Board's goal is to find a middle-ground position, to allocate power between labor and management by "striking the balance" in the appropriate place, with units that are neither too large nor too small.[9]

As if this task, committed to the Board's discretion, were not already sufficiently difficult, in the health care field there may be, as one court has phrased it, a "joker in the deck." [10] Much has been written, especially by reviewing courts, about the effect of the legislative history of the 1974 health care amendments on the Board's discretion to decide appropriate bargaining units. As the D.C. Circuit recently observed, in passing the 1974 amendments "Congress, in the final analysis, decided against modifying section 9 of the Act; [11] * * * hence, the same statutory standards that had existed before the enactment of the 1974 Amendments with respect to unit determinations and certification procedures remained in the statute, entirely unmodified." [12] Even

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[5] *Allied Chemical & Alkali Workers, Local No. 1 v. Pittsburgh Plate Glass Co.,* 404 U.S. 157, 171–72 (1971); *NLRB v. Hearst Publications,* 322 U.S. 111, 132–35 (1944); *Pittsburgh Plate Glass Co. v. NLRB,* 313 U.S. 146 (1941); *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 199 (1941). Not all administrative agencies engaged in regulating labor-management relations possess such broad unit-making discretion. Morris, *The Developing Labor Law,* Second Edition, 415 at fn. 12.

[6] *Allied Chemical & Alkali Workers, supra,* 404 U.S. at 171–72.

[7] *Packard Motor Car Co. v. NLRB,* 330 U.S. 485, 491 (1947).

[8] See Gorman, *Basic Text on Labor Law,* 66–69 (1976); Abodeely *et al, The NLRB and the Appropriate Bargaining Unit* 12–13 (rev. ed. 1981); *NLRB v. Hillview Health Care Center,* 705 F.2d 1461, 1469–70 (7th Cir. 1983).

[9] *NLRB v. Hillview Health Care Center,* 705 F.2d at 1469.

[10] *Id.*

[11] *IBEW, Local Union No. 474, AFL–CIO v. NLRB,* 814 F.2d 697, 699 (D.C. Cir. 1987).

[12] *Id.* at 701. The Supreme Court in *Packard, supra,* declined in that case to look at legislative history regarding whether "foremen" could appropriately constitute a bargaining unit, noting that "we are invited to make a lengthy examination of views expressed in Congress while this and later

Continued

the D.C. Circuit recognized, though, that other Courts had disagreed.[13] Two Circuits [14] have required the Board to apply a "disparity of interests" test, based largely on the legislative history, while eight others [15] have made it clear the Board should follow the committee's admonition to give "due consideration * * * to preventing proliferation of bargaining units in the health care industry," though they fail to "dictate the precise weight to be accorded the admonition." [16] We believe that rulemaking renders it unnecessary to resolve this conflict, or pick one doctrinal formulation over the other, since rulemaking eschews doctrinal applications in favor of greatly expanded information gathering, to be followed by unit determinations based on empirical judgments of the type that Congress expected an expert, informed administrative body to make.[17]

Under adjudication the Board has typically stated it was applying either the "community of interests" or "disparity of interests" standard to the facts of the particular case, as indicated reaching virtually the same result in every case, depending on which doctrine was being applied (NLRB Exh. 5, revised). Under the "community of interests" test, the Board has found five or six units appropriate (not including a statutorily-required separate unit of guards, seldom if ever sought, and a separate unit of physicians, sought in only one published decision since 1974 [18]): RNs, other professionals, technicals, service and maintenance, and business office clericals. In addition, some individual Board members have consistently found skilled maintenance units appropriate; others consistently found them inappropriate. (NLRB Exhibit 5, revised.) Under the "disparity of interests" test, the Board has uniformly found three units appropriate, aside from the two seldom-sought units mentioned above: All professional employees, including RNs; technical employees; and service and maintenance employees, including business office clericals.

Though it had consistently reached different results under the two tests, the Board in *St. Vincent Hospital and Health Center,* 285 NLRB No. 64 (Aug. 19, 1987), minimized the conceptual difference between them. Both, the Board stated, looked at the same factors:

> * * * the "disparity-of-interests" standard to a significant extent embodies the "community-of-interests" approach. That is, even under the disparity approach, the Board judges the appropriateness of the unit sought in terms of, traditional community-of-interests criteria: employees' wages, hours, and working conditions; qualifications, training, and skills; frequency of contacts and extent of interchange with each other; frequency of transfers into and out of the unit sought; common supervision; degree of functional integration; collective-bargaining history; and area bargaining patterns and practices. Under the "disparity-of-interests" standard—as under the "community-of-interest" approach—the Board looks at the above factors as they are shared by employees in the unit petitioned for, and as they tend to set those employees apart from other employees. Where the "disparity-of-interests" formulation differs from the "community-of-interests" standard, according to the Board's *St. Francis II* decision, is in the significance afforded the above factors. Because of Congress admonition to avoid unit fragmentation, the "disparity-of-interests" test requires more in the way of "disparities" or differences between the employees requested and those in an overall unit to grant a separate unit in the health care industry than would be required under a "community-of-interests" formulation. (Slip op. at 10–11, footnotes deleted.)

It is difficult to weigh or quantify the requirement of "more" as it applies to separate, different interests, i.e., how much would be enough more to satisfy the "disparities" test? Regardless, as we observed in the NPR, "these tests over the past decade or so have developed a 'life of their own,' and have been taken to refer to more or fewer units, respectively * * *." (52 FR 25143.) As the Board stated in *Newton-Wellesley Hospital,* 250 NLRB 409, 411 (1980), various courts' "disagreement with our approach may be largely semantic." And, as the Second Circuit said in *Masonic Hall v. NLRB,* 699 F.2d 626, 637 (1983), a court sometimes enforces the Board's decision if it "can infer from the Board's result that it has taken the nonproliferation policy into account." The court suggested that perhaps courts "focus * * * on what the Board did as much on what it said." *Id.* As noted in the NPR (52 FR at 25143), and in our discussion above, our decision to determine units by rulemaking reflected a desire to replace earlier doctrinal applications with formulations of units based on the facts, or realities, of the workplace, as learned from evidence presented to the Board by interested parties during the rulemaking proceedings.

Under rulemaking as under adjudication, we intend at all times to be mindful of avoiding undue proliferation, not only because this desire was expressed in the legislative history, but also because it accords with our own view of what is appropriate in the health care industry. It would be most undesirable to create or permit a large-scale splintering of the workforce into the numerous trades, technical disciplines, and professions typically found in health care institutions.[19] To give each such grouping a separate voice for organizing and negotiating would create a never-ending round of bargaining sessions and individualized demands not conducive to stability, industrial peace, or the smooth delivery of services to the public. We have entered the rulemaking endeavor with an intention to create a reasonable number of units that will realistically reflect pronounced natural groupings to be found in health care facilities: groupings that will not be so large that organizing them is exceedingly difficult, and representing them even harder because of inherent conflicts of interest within the groups; but large enough that unnecessary, repetitious rounds of bargaining are avoided along with such undesirable results as frequent strikes, wage whipsawing, and jurisdictional disputes. We have not begun with a preordained number, but at the end of our examination will consider whether the numbers of units found appropriate are, in fact, too numerous. See section XXI, Proliferation, *infra.* In any event, there will be no units found appropriate besides those permitted in the final rule.

Although under rulemaking we shall attempt to avoid the doctrinal formulations utilized under adjudication, many of the factors we consider will be similar. Thus, among the factors to be considered will be uniqueness of

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legislation was pending to show that exclusion of foreman was intended. There is, however, no ambiguity in this Act to be clarified by resort to legislative history * * *." *Id.* 330 U.S. at 492.

[13] 814 F.2d at 704.

[14] The Ninth and Tenth. See discussion by concurring Judge Buckley in *IBEW Local Union 474 v. NLRB,* 814 F.2d at 717.

[15] The Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Eleventh. See cases cited *id.* at 703–05.

[16] *Id.* at 717.

[17] See, e.g., Estreicher, *Policy Oscillation at the Labor Board: A Plea for Rulemaking,* in proceedings of NYU Annual National Conference on Labor (1984), reprinted in 37 Ad. L. Rev. 163, 172 (1985).

[18] *Ohio Valley Hospital Assn.,* 230 NLRB 604 (1977). See also *Montefiore Hospital & Medical Center,* 235 NLRB 241 (1978), where a separate unit of physicians and dentists was found appropriate, but largely because there were no other professionals employed at the employer's health center, which was deemed to constitute a separate appropriate location.

[19] As Abodeely notes, "the health care industry was believed to be particularly vulnerable to the formation of a multiplicity of bargaining units. From the doctors in the top echelon to pot washers on the bottom, the labor force of a large health care facility is composed of a highly stratified, complex myriad of occupational classifications." This was, Abodeely states, the purpose behind the proliferation language referred to in the legislative history. Abodeely, *supra,* at 245. See also *NLRB v. Hillview Health Care Center,* 705 F.2d at 1470.

function; training, education and licensing; wages, hours and working conditions; supervision; employee interaction; and factors relating to collective bargaining, such as bargaining history, matters of special concern, etc. Location and scope of the job market may be relevant: i.e., whether the classification is part of a job market external to the facility or even to health care, or rather shares a job market with others in the facility or, perhaps, in the areawide health care community; job market is a factor not extensively considered under adjudication, probably because evidence regarding it is not likely to be introduced during the litigation of a particular case. In addition to these factors, should the evidence reveal the possibility of a separate unit, we shall examine the likelihood that such a separate unit would result in interruption in the delivery of health care, wage whipsawing, or jurisdictional disputes, matters with which Congress expressed concern during the deliberations that preceded the 1974 amendments. (See, e.g., 52 FR 25145; *St. Francis Hospital (St. Francis I)*, 265 NLRB 1025, 1027, 1035 (1982) (dissent, Chairman Van de Water); but cf. *Manor Healthcare Corp.*, 285 NLRB No. 31, n.7 (Aug. 6, 1987).) [20] The emphasis, during our rulemaking deliberations, has been and will be on the empirical—what, according to the mass of evidence presented, is warranted and will facilitate collective bargaining without jeopardizing the public interest—as opposed to prior, more doctrinal, more conceptually oriented, determinations. We are confident we are now a better informed administrative body in exercising the substantial discretion which we possess in the area of unit determinations.

[20] Senator Taft, in opening the Congressional debate on the health care amendments, said: "The issue of proliferation of bargaining units in health care institutions has also greatly concerned me. Hospitals and other types of health care institutions are particularly vulnerable to a multiplicity of bargaining units due to the diversified nature of the medical services provided patients. If each professional interest and job classification is permitted to form a separate bargaining unit, numerous administrative and labor relations problems become involved in the delivery of health care. . . . I believe this is a sound approach and a constructive compromise as the Board should be permitted some flexibility in unit determination cases. I cannot stress enough, however, the importance of great caution being exercised by the Board in reviewing unit cases in this area. Unwarranted unit fragmentation leading to jurisdictional disputes and work stoppages must be prevented." *Legislative History of the Coverage of Non-Profit Hospitals Under the National Labor Relations Act*, at 113–14.

IV. Two Units: All Professionals/All Non-Professionals

Some members of the hospital industry have argued to us that if the Board engages in rulemaking, it should find only two units appropriate—all professional and all non-professional employees (in addition to guards). Upon consideration of the record, we determine that the evidence does not warrant limiting the number of units to two broad units.

A. Generally; History of the 1974 Amendments

While the industry generally supports two broad units of employees, the support is not universal. Some employers suggest other configurations including a wall-to-wall unit, a separate doctors' unit, and a separate technical unit. (Comment 1, Lancaster Fairfield Community Hospital; Comment 17, Middletown Regional Hospital; Comment 306, Herrin, attorney for health care associations.) Indeed, one employer felt that several separate units was equitable as each had its own characteristics. (Comment 2, Grays Harbor Community Hosp.) The position of some, in favor of two units, is inconsistent with evidence which shows that until *St. Francis II*, employers seldom requested all-professional or all non-professional units (Friedman, 5057), and that where employers did request broad units for elections they sometimes opposed such units during election campaigns or at the bargaining table (see Registered Nurses, section V). On the other hand, unions fully support more than two broad units for organizing (AFL Br. 112; IUOE Br. 8; Local 1199, 3742; FNHP, 3; UFCW, 4457; NUHHCE, 4778; IBT, 5100; SEIU, 5161). These unions' position is consistent with the evidence presented of organizing history (see section V, Registered Nurses; section IX, Skilled Maintenance; section X, Business Office Clericals; etc.).

Contrary to some employers' claim that the legislative history of the hospital amendments supports a two-unit configuration, the history shows that Congress chose not to amend section 9(b) (assuring employees the fullest freedom in exercising rights guaranteed by the Act) in a way that would enact special representation case rules for the health care industry. Even Senator Taft's proposal, which embodied the proposal advanced by *employer* associations in the health care industry but which died in committee, contained special rules establishing as presumptively appropriate three non-professional units (technical, clerical, service and maintenance), in addition to a professional unit and guards, for a total of five. Furthermore, the hospital industry agreed, in a negotiated compromise with organized labor, to abandon its request for special statutory rules limiting the number of hospital units in return for provisions governing strikes. (See Legislative History, *supra*, at 91 (Sen. Cranston); 256 (Sen. Taft); 288 (Rep. Thompson), cited in AFL Br. 18–27.) The arguments of many employers that all professionals interact on the job, and that there are insufficient distinctions between classifications of non-professional employees to warrant their separation into different units, and the unions' argument that the record supports separate associational interests, are dealt with under specific unit categories.

B. The Record Shows That Multiple Units Do Not Undermine Functional Integration of Work; Do Not Result in an Increase in Proliferation, Strikes, Jurisdictional Disputes, or Wage Whipsawing; and Do Not Substantially Increase Industry Costs

The industry's concerns with having more than two units are the following:

1. *Changes in the industry.* The industry has failed to support its claim by concrete evidence that the DRG method of government payments to hospitals has resulted in restructuring of hospital workforces away from traditional departments and toward a product-line organization that requires greater integration of employee functions. It is claimed that product line management (where different types of employees work in a service related group, for example cardiology) is used increasingly in hospitals and requires that traditional lines of employment be crossed to provide appropriate patient care as employees in a department cooperate (Abramovitz, 325; Comment 54, Gepford Hosp.; Comment 192, Chicago Healthcare Human Resources Assn; Comment 108, Resurrection Health Care Corp.). However, the evidence shows that product line management has less to do with actual practice on the wards than it does with financial operations performed in the business office (WS Kennedy at 6–7). There is no more interaction between professionals than under other forms of financial control. New financial requirements have not resulted in changes in interaction among hospital workers. (WS Kennedy at 6–7.) Even in hospitals where RNs and other professionals are subject to dual lines of control (combining authority under own licensure and under team or functional

department), RNs continue to report to nursing on clinical issues, and retain traditional responsibility for nursing (Comment 293(i), Feldsine; Thompson, Chi II 107; Kennedy, 5561; Fine, 3146–48). Contrary to the generalized claim (Comment 105, Mass. Hospital Assn.) that multiple units would be divisive since one department might contain employees from several units, specific evidence shows that separate units have not prevented effective use of product line management (Houston, 4031, 4048).

In arguing that hospital workforces have moved away from a traditional structure, the industry relies heavily on the team concept, claiming that its use has resulted in greater integration among employees requiring integration of units (Rhodes, 11–12). However, the team concept dates back many years in this industry (AFL Exh. 12, 13, 14; AMA, 4348). Hospital representatives relied on the existence of teams in their unsuccessful attempt to defeat the 1974 amendments (ANA Br. 126). The record does not demonstrate a substantial increase in the use of interdisciplinary teams since then (AFL Exh. 15, study by Temkin-Greener; WS Kennedy at 8–9).

Although the industry argued that the team approach is widespread in the country and gave examples of many types of teams such as discharge planning, and special unit teams like oncology, diabetes, and cardiac rehabilitation (Mixon, Chi II 275; Gallagher, 3543–45; Comment 191, Trinity Lutheran Hosp.), the weight of the evidence shows that utilization of team care is neither widespread among hospitals, nor extensively used within hospitals (Bachus, Chi I 132; Lumpkin, 89–90; Dauner, 3236–40; McCullough, 4819–20; Gilmore, 4910). A study of 60 randomly selected hospitals showed fewer than half used discharge planning teams; a minority of the hospitals had special unit teams such as diabetes, oncology, and cardiac rehabilitation (Attachment to AFL Br. from Supplemental Testimony of L. Kennedy). Some hospitals do not utilize the team concept at all (Gilmore, 4910). Most hospitals with teams have no more than six or seven teams, with two to eight members on a team (Coney, 162; Thompson, Chi II 14–15, 72; Mixon, Chi II 277, 294–296), and a majority of employees do not participate on those teams (Bachus, Chi I 129–132). Specialized hospitals, such as children's hospitals, which may use multi-disciplinary teams to a greater extent, are atypical (AFL Br. 104).

The evidence does not support the industry's claim that participation on teams changes the employee's role. Collaboration among professionals is not new (Ballard, 56). For example, one of the most common teams is discharge planning which historically involves nursing and social work. But the team approach does not alter each licensed professional's responsibilities or scope of practice (Ballard, 56; Willman, 4461; Twomey, 131). For example, use of physicians, assistants and nurse practitioners does not alter physicians, scope of practice. Nor does participation on a team affect an employee's wages, hours of work, employment benefits, qualifications, training, skills, job functions, or history of bargaining (AFL Br. 104–105; Graybill, 4174–75; Houston, 4044–45). Where teams are used, only a small proportion of the professional employees are involved. Contact between the members of the team is limited; each member continues to perform the specialized work of his or her profession. The time spent on a team is limited: team members may perform their work separately and then exchange information; team members are not likely to engage in more than fleeting communication regarding collective bargaining matters. (Thompson, Chi II 107, 109, 118–119, 121; and see section V, Registered Nurses, *infra.*) Recognition by the Joint Commission on Accreditation of Hospitals (JCAH) of the need for collaboration on the interdisciplinary level (AHA Br. 16 citing JCAH sec.) does not itself demonstrate that any change in scope of practice occurs.

There is evidence that various employees interact on hospital committees to evaluate hospital programs, but the evidence failed to demonstrate that the interaction affects the professionals' responsibilities or scope of practice (see, e.g., AHA Position Statement p. 8).

The industry made general, unsupported claims that separate units would interfere with the development or use of the team approach (Graybill-Subrin colloquy, 4185–86; Donnelly, 4131; Coney, 162). There is no evidence that separate units have resulted in failure of professional integration and cooperation on teams (ANA Br. 139; Bullough, 4651–53). On the contrary, teams were shown to be compatible with presence of RN-only units (ANA Br. 123; Thompson, Chi II 86–87; Houston 4048; Bullough, 4651–52).

The industry's emphasis on teams and product lines focused almost exclusively on professional employees. There was no claim that these teams brought technical employees and unskilled service employees together in a single group. Nor was it claimed that business office clericals were involved in health care teams. (AFL Br. 75.) The evidence shows that interdisciplinary teams do not include skilled maintenance employees (IUOE Br. 92; Mixon, Chi II 275).

The industry contends that the use of multi-skilled employees is widespread and on the increase as hospitals seek cost-cutting measures, address the needs of rural hospitals with limited full time staffing needs and large facilities with changing patient loads, and as employee shortages, aging and declining population lead to fewer workers; further, that adoption of the proposed units will abrogate the ability of facilities to effectively utilize multi-trained employees whose skills cut across unit lines (AHA Br. 8, 9; AHA Br. attachment 3 attaching survey by CAHEA; Rhodes, 11; Houston, 4025–26, 4040–42; Comment 137, McDonough District Hospital; Comment 189, Memorial Health System, Inc.; Comment 193, Dolly Vinsant Memorial Hospital). However, the evidence shows that cross-training *between job groups* was not substantial and did not result in blurring lines between separate units. There are no examples of any group of professionals being cross trained to perform work of RNs either in organized or unorganized settings (Stickler, 22–25; Twomey, 130–131). The interchange of RN functions is not a viable concept because state licensing statutes preclude cross-training of other health professionals in patient care duties and responsibilities of RNs (Ballard, 56–57; Dumpel, 3277–78; Lipari, 3702–03; Rosen, 4665–67; Comment 293(j), paper on licensure of health care personnel).

The evidence shows that multi-competency programs are overwhelmingly aimed at technical employees. They developed because of a perceived need to provide technicians with a broader range of technician skills (WS Schoen, attaching article by F. Morgan). These programs are mainly confined to acquisition of additional technical skills by employees already holding technical jobs as shown by the operation of the programs referred to in the record. Participants in the Methodist Hospital "Add-A-Comp" program which provides employees with laboratory, respiratory therapy, electrocardiograph, emergency medical technician, and similar skills are already licensed or credentialed and include employees having some of the listed skills (Stickler, 19–21 & Chi I 36). Although the Multi-Competency Technical Program at the University of Alabama provides training in medical office skills, it is basically designed to add basic x-ray skills or

extend laboratory skills for technicians who are already licensed (Stickler, 19–21, Chi I 36–38). There is no showing that students trained in medical office skills actually perform technical tasks. Furthermore, the mere existence of the program does not show widespread participation, since the record fails to show there are many students involved (Stickler, Chi I 38–39). Moreover, even if these programs turn out a number of multi-competent graduates, they are generally employed in physicians' offices or outpatient facilities rather than in hospitals (Schoen, 5236 and WS Schoen, attaching article by F. Morgan) and their use therefore has little relevance to units in acute care hospitals.

We conclude from the record evidence that cross-training programs extending beyond the technical workforce are rare. Unskilled service workers cannot be readily trained to become technical employees because they lack the advanced education required and because of state licensure laws (AFL Br. 35–36; IUOE Br. 42, fn 5). Service workers cannot be easily trained for business office clerical jobs because of the specialized skills required in the business office (AFL Br. 57–58). Cross training from service to skilled maintenance or technical positions is virtually unknown (O'Cleireacain, 5467; McKinney, 5481). Business office clericals do not transfer into skilled maintenance positions (IUOE Br. 42). Nor are skilled maintenance employees being cross-trained into other job groups (Stickler, Chi I 9, 35–37). The few examples of individuals having interchange of functions (emergency technician starting IVs, RNs doing work after daytime hours normally performed by respiratory therapist or physical therapist, medical technologist trained to watch the heart monitor while RN is on break—Houston, 4026–27, 4042) are very limited. Evidence does show that separate RN units are compatible with limited interchange of function (ANA Br. 153, citing Houston, 4040.)

There is no evidence to support the industry's general claim that cross-training has been inhibited by collective bargaining in separate units (ANA Br. 151; IUOE Br. 45; Stickler, 45–49). The suggestion (Comment 142, St. Anthony's Health Corp.) that use of multi-competent workers would be hurt by turf battles between professional groups, separate bargaining unit designations, and existing legal restrictions on practice patterns is speculative and is undercut by finding that most multi-competent workers are within one unit—the technical unit. Any problems raised by legal restrictions such as licensure requirements do not derive from the Board's proposal to allow multiple units. Industry testimony on interchange of functions between professionals and non-professionals (Donnelly, 4073–74; AHA Br. 11) is not relevant because the Act would not permit a unit combining professionals with non-professionals, absent a self-determination election by the professionals.

Countering the claim of increasing integration of health care employees is evidence of increasing fragmentation as a result of greater sophistication of work, decrease in the full time equivalent work force and rise in part-time and temporary jobs, increase in the use of subcontracting, growing gaps between patient care and non-patient care jobs (such as business office clericals), and growing gaps between RNs and other professionals because of the RN shortage (WS Schoen).

2. *Proliferation, strikes, jurisdictional disputes, and wage whipsawing.* There is little if any evidence that multiple units in the health care industry have resulted in any of the problems perceived to arise from proliferation such as strikes, jurisdictional disputes, and wage whipsawing.

First, the record shows that most hospitals that are organized have few units (Robfogel, Chi II 223; Comer, Chi II 329; Cammarata, 4424–4425). Logically, the potential for a number of units does not mean that every hospital will be faced with this number of organizing campaigns. Indeed, a successful organizing effort of one unit in a hospital does not appear to have had a ripple effect on further organization (Gilmore, 4894; Splain, 5252–53; IUOE Br. 69–70). Statistics over the last ten years show little organizing in residual units. Health care workers organize no more frequently in facilities where some workers are already engaging in collective bargaining than in facilities where no employees are represented (WS Splain at 14–17). A vast number of organized hospitals have only one unit (WS Schwarz at Table 1 & 264; Sockell, 4520; Shea, 5163). AFL analysis of all hospital contract renewal notices received by the FMCS from hospitals from 1983 to 1987 shows that 55% of all organized hospitals are party to only one collective-bargaining agreement; almost 80% negotiate no more than two contracts; and almost 90% negotiate no more than three contracts (AFL Exh. 5 p. 1). In an SEIU survey of 200 private hospitals, 74% have 3 or fewer bargaining units (WS Shea, SEIU, Table 2).

Evidence shows that, with the exception of New York State, where pre-1974 practice was to permit each employee group to have its own unit, recognition of RN-only units has not led to organizing efforts by other professionals (King, Chi II 38: In Ohio there is only one unit in which professionals other than RNs are represented separately; Gilmore, 4894: No hospital represented by Maine State Nurses' Association has another professional unit in addition to RN unit). Existence of a physicians' unit is rare; some states, like Texas, do not permit physicians to be employees of health care facilities (IUOE Br. 64, 99; see section VI, Physicians, *infra*). There is no evidence that the existence of a separate skilled maintenance unit has led to the organization of other units (IUOE Br. 62–65 and section IX, Skilled Maintenance, *infra*).

Some witnesses' statements that multiple units lead to strikes, jurisdictional disputes, and wage whipsawing were, for the most part, general and speculative, and not supported by examples. See, for example, Graumann, 397, 409; Dauner, 3199; Corbett, 3369; Emanuel, 3503–04; Weinrich, 4254, 4256; Cammarata, 4403, 4405–06. The industry did not submit data with respect to the degree of organization, number of organized units per hospital, or incidence of strikes or sympathy strikes, nor evidence that a particular type of unit has proven to be strike prone (AFL Br. 118–19).

In fact, the evidence submitted by unions shows there is a low incidence of strike activity in the health care industry; the rate is lower than in other industries (IUOE Br. 75; NLRB Exh. 1; AFL Exh. 6). The ANA had a voluntary no-strike policy until 1968 (Shepard, 4931–32). The California Nurses' Association (CNA) offers binding arbitration (WS Absalom at 16). According to available data, only 3.3% of all contract negotiations, including nurse bargaining, resulted in strikes. From 1984–1987, strikes in the health care industry occurred substantially less often than in all other industries (FMCS data reprinted in WS Schoen at 28 and AFL Exh. 6). The minimal level of strike activity is confirmed by studies done by several health care unions. Since 1938, SEIU has had a strike incidence of 1.4% in over 2700 hospital contracts (WS Shea at 10). Of over 1,000 hospital contracts negotiated since 1975 by the NUHHCE, only 43 involved strikes (Muehlenkamp, 4776). IUOE, which represents almost 300 hospital

bargaining units, has had only 25 strikes in its history (IUOE revised Exh. 2).

Industry witnesses who testified about collective bargaining experiences in the industry confirmed the infrequency of strikes (Comer, Chi II 320; Corbett, 3374–75; Henry, 3026, 3062, 3085–86). Indeed, Kaiser specifically stated that its observation that there is a greater likelihood of work stoppages in facilities with multiple units was limited to craft-specific units, not the broader, traditional unit groupings (Comment 311). The industry's claim that the Board should discount the lack of strike activity in professional units because few facilities have multiple units supports our finding that in fact few facilities have multiple units.

One study showed there is generally no correlation between the number of units in a hospital and the frequency of strikes (AFL Br. 118, fn citing FMCS study). Other evidence suggests, however, that the likelihood of strikes decreases as the number of units in a hospital increases (IUOE Exh. 2 revised). Strikes also tend to occur more frequently in units with more employees than in smaller units (AFL Exh. 5). For example, only 16.4% of hospital contracts covered 300 or more employees, yet these units account for 45.5% of all strikes, while 51.52% of all hospital contracts covered 100 or fewer employees, but accounted for only 17.7% of all strikes. The average size of a striking unit in the 1984–87 period was three times the size of a non-striking unit. (AFL Exh. 5 citing FMCS data.) See also WS Shea at 11–12 with similar variation in size of striking SEIU units. Strikes in broader units have the greatest impact on health care. Strikes in New York City by Local 1199 encompassing many worker classifications including other professionals, technicals, service, and clericals closed down most health care in the city. (Abelow, 229.) Strikes in broader units also draw in groups of employees who, if in their own smaller unit, might have no reason to strike (Dumpel, 3291: Strike over nurse practice issues would have no importance to other groups of employees; Viat, 3466; Shea, 5188: Skilled maintenance employees, technical employees enmeshed in strikes over issues related to other groups of employees).

The evidence shows that sympathy strikes are virtually nonexistent. No-strike clauses in hospital contracts forbid sympathy strikes, and the pattern in the industry is for covered employees to obey their contracts. (Schloop, Chi II 169; Sackman, 3585; Ahmed, 3708–09; Muehlenkamp, 4777.)

We cannot accept the argument that multiple strike notices alone, even absent actual strikes, are disruptive, since the purpose of the notice is to minimize possible disruptive impact by giving hospitals time to prepare for a strike. In any event, there was no showing of widespread frequency of strike notices and no evidence that notices caused disruption in health care delivery. Hospitals have not generally sought common expiration dates, which would be a possible solution to recurring near strikes. (Sackman, 3586; Schmidt, 3625; Willman, 4496; Muehlenkamp, 4771; Henry, 3074–75; Corbett, 3359–60; Weinrich, 4282).

Some hospitals' argument that they do not have the same defensive measures as do employers in other industries, for example, because it is difficult to replace striking professionals, is essentially an argument that hospital employees not be allowed to exercise their statutory right to strike. The record does not show in any event that they engage in strikes frequently.

Industry's general claim (AHA Br. 26–27) that multiple units will inevitably result in jurisdictional disputes is not supported by the record. The record shows a low frequency of jurisdictional disputes in hospitals and no correlation between the occurrence of disputes and the number of units. Jurisdictional issues that have arisen are often resolved on an informal basis without resorting to arbitration (Absalom, 3282–83; Sackman, 3585; Schmidt, 3625; Viat, 3471; IUOE Br. 78–79). There was no record evidence of jurisdictional disputes in hospitals between units of professional employees (Emanuel, 3503–4); such disputes are usually fought and resolved in the public arena (Absalom, 3282). Jurisdictional disputes between non-professional groups are rare, apparently because traditional unit lines separate functional groupings and the unit employees do not view the other units' duties as being within their purview (AFL Br. 124–25). The few disputes specifically referred to by the industry, such as accusations of mistakes on the job, and conflict between duties of RNs and LPNs assigned by the hospital (Krasovec, 413–415; Giblin, 5389–90; Graumann, 396–399, 408), encompassed disagreements that could arise even under all-professional and all non-professional units. The approval of an overall skilled maintenance unit, *infra*, should help reduce the risk of jurisdictional disputes between different skilled crafts.

The industry failed to support its general contention (Rhodes, 13) that multiple units result in employees' competing for the best settlement, burdening negotiations, and inflating settlements. The record shows that wage whipsawing and leapfrogging rarely, if ever, occur in the hospital industry. This is apparently the result of separate labor markets for RNs, clericals, technicals, skilled maintenance, and doctors (ANA Br. 174; AFL Br. 37–38, 59–60, 86–88, 121–22; IUOE Br. 83 citing record), and the method of setting Medicare and Medicaid rates which limits the pass-through of spiralling wage increases (Friedman, 5044–45). In view of the unorganized nature of the health care industry as a whole, separate unit contracts tend to follow wage patterns set by non-union employers (WS Shea at 13).

3. *Costs.* Some unions question the relevance of costs in determining hospital bargaining units. In view of Congressional concern in the health care amendments with the ability of health care institutions to deliver uninterrupted health services, it is relevant to consider whether multiple units increase costs to health care institutions so as to disrupt the stability of the institutions. However, to the extent the industry's contention regarding costs is an argument that employers cannot afford collective bargaining with their employees, we note that the health care amendments were passed in response to Congress' concern with low wages and poor working conditions in the hospital industry. *Beth Israel Hospital* v. *NLRB*, 437 U.S. 483, 497 (1978). It was anticipated by Congress that the amendments might lead to increased union organizing and bargaining which in turn might improve employee wages and working conditions. Costs associated with these anticipated improvements are not relevant to the Board's decision as to appropriate bargaining units.

Some commentators claimed that multiple units would increase costs by increasing expenses for contract negotiations, wage and benefit increases, administration and legal fees, grievances, supervision, and accounting (Comment 62, St. Mary's Hosp.; Comment 153, Sturdy Memorial Hosp.; Comment 140, Park City Hosp.; Comment 130, St. Vincent's Hosp., Birmingham; Comment 224, St. Luke's/Roosevelt; Comment 311, Hosp. Council of Southern Calif.). There was no empirical or specific evidence showing comparative labor costs in hospitals with different numbers of units. For example, one witness stated that facilities in Ohio with three or more

units devoted more time and resources to collective bargaining than hospitals with fewer units, but had no specific examples (Weimer, Chi II 7, 65–66, 77–79). Another industry witness testified generally that increased costs were associated with negotiating in multiple units in Pennsylvania, but gave no specifics (Cammarata, Hosp. Council of W. Pa., 4392–4430). In fact, studies have found minimal cost impact, 3%–5%, of labor unions on hospital costs. This rate is low when contrasted with the overall rate of health care cost inflation (WS Schoen at 31). The example relating to the costs for negotiations at a public hospital in Massachusetts with eight bargaining units (Robfogel, Chi II 222–23, 228, where out-of-state as well as local attorneys appeared for each negotiating session) was not shown to be typical.

The industry contends that small hospitals are particularly vulnerable to increased costs and cannot afford the money and staff resources needed for dealing with multiple units. However, we were not provided with empirical data for comparison. We note also that few health care facilities have more than two or three units.

The industry's claim that hospitals generally treat each bargaining unit as a separate cost accounting center, thereby adding to the complexity of operating a hospital, is unsupported in the record (Dauner, 3233–34), and in any event is irrelevant.

One witness claimed that multiple units would limit an employer's ability to secure significant cost reductions in employee benefits available now by marketing large groups of employees to third party providers and that the cost of administering multiple employee benefit plans is higher. No specific examples were cited of increased costs (Cammarata, 4402–03). Moreover, benefits may be negotiated across-the-board even in multiple units (Jacquin, 5366–68).

The claim by some that multiple units will result in limiting opportunities for job advancement and security are not supported by the record; neither is the claim that multiple units hamper affirmative action because departmental seniority and separate bargaining deter hiring and career development. To the contrary, there is record evidence (set forth in Sec. V, Registered Nurses and other sections), that there is limited career movement in hospitals regardless of whether or not the hospital is organized because promotions, layoffs, etc. are done by department and because of the distinct skills and education of the various groups of employees which restrict interchange and mobility. There is also evidence that in organized facilities, unions have sought career ladders, training, and upgrading, and have not acted to limit movement among workers. (WS Schoen at 15; Supplemental Statement of Schoen.)

Some employers argue that multiple contracts limit their flexibility in job assignments, scheduling, and performance evaluation. This appears to be an argument that the industry does not wish to have to bargain since bargaining limits the employer's flexibility. However, the statute gives employees the right to bargain for more favorable terms of employment, and employers have the opportunity at the bargaining table to seek terms giving them flexibility.

Arguments that multiple contracts will result in confusion for management as to which contract covers which employees (Comment 104, St. Francis Hosp., Hartford), that it would be hard for employees to understand and deal with many units (Comment 51, O'Bleness Memorial Hosp.), and that multiple units work against cohesiveness among smaller groups like business office clericals (Comment 138, Rice Memorial Hosp.) were not supported by specific examples.

Finally, the record demonstrates some countervailing considerations to any increased costs as a result of multiple units. At least some of the administrative costs of unit determinations come from the hospitals' opposition to organizing. In 1981 Congress banned the use of Medicare funds for anti-union consultants on estimates that this activity cost $30 million dollars a year (WS Shea at 15, citing Medicare Manual). There are presently industry costs for prolonged hearings and appeals in many units, which we are confident rulemaking will substantially reduce. Bargaining in large units may prolong negotiations and increase costs as employees are involved who would otherwise have no interest in certain demands (WS Shea at 15). Employers can face increased costs even if there is only one unit, since there may be separate negotiations for different major employee classifications (Owley, 4375–76) or separate contract provisions (Emanuel, 3499–3501). Costs might be contained by combining separate units for bargaining purposes or having common expiration dates for contracts, but the record shows lack of employer support for such union proposals (See Sec. IV(B)(2), *supra*).

C. Broad Units Militate Against Health Care Employees, Organizing and Bargaining, Contrary to Congress' Intent

1. *The impact of broad units on organizing and bargaining is a relevant consideration.* As shown above, Congress passed the health care amendments, in part, to improve conditions for health care industry employees by extending to them the rights of the National Labor Relations Act which permits organizing and collective bargaining. *Masonic Hall* v. *N.L.R.B., supra,* 699 F.2d at 634. While, as the industry correctly contends, the extent of union organization cannot be controlling in unit determinations, it is a factor, and in view of Congress' concerns, the ability of health care employees to organize and bargain is an important consideration in determining whether more than two units are appropriate in the industry.

2. *Historically, health care workers organize and engage in initial bargaining in occupationally homogeneous units.* The evidence shows that broad units militate against organizing by health care workers (AFL Exh. 4, AHA Report on Union Activity in the Health Care Industry). Although there were examples of broad-based bargaining, particularly in New York City, the record shows that organizing and initial bargaining among health care workers has historically been by occupationally-homogeneous units (AFL Appendix A; WS Shea, Table 1, SEIU Survey; and section V, Registered Nurses; section VI, Physicians; and section VII, Other Professionals). For example, in the AFL survey of all private sector hospitals in which an AFL affiliate has organized one or more units, there were 920 homogeneous non-professional units, and only 104 heterogeneous units (AFL Br. Appendix A). The ANA constituent state nurses' associations represent 363 all-RN bargaining units; only 4 all-professional units were organized before *St. Francis II* (Comment 240, ANA, Stull Affidavit). Evidence prepared by the industry confirmed that occupationally diverse bargaining units are found only in a minority of contracts (AFL Exh. 1, [Hospital Industrial Relations Information Services, p. 5]).

The industry contends that unions have requested or agreed to all-professional and all non-professional units, have successfully organized and bargained in these units, and that therefore a Board decision to find appropriate only two broad units (plus guards) would not negatively impact on organizing and bargaining. The record

shows that most union requests for broad-based units occurred after *St. Francis II*, at a time when the Board would have rejected most occupationally-homogeneous units. Broad bargaining, where it does occur, appears to develop over time, after individual employee unit concerns are addressed and the bargaining relationship has matured (WS Shea at 8; WS Pastreich; Friedman, 5046). Even then, the record shows that employers may meet separately with one or more subunits on their concerns and that there may be separate contract provisions for different concerns. See *e.g.* section VIII, Technicals; section X, Business Office Clericals. Thus, in New York City, where Local 1199 engages in citywide bargaining with the League of Voluntary Hospitals on behalf of its Professional, Technical, and Clerical Division (professionals other than RNs), Hospital Division (service and maintenance employees) and Drug Division (pharmacists, social workers, therapists), the individual units in these divisions were separately organized and negotiated their first contracts separately; joint bargaining of these divisions developed over twenty years (Olson, 4694–4700, 4706, 4716–19; Ratner, 3710, 3725–33, 3738). Proposals are submitted by each separate division; each classification has at least one representative at the bargaining table; and there are local negotiations for specific issues at some hospitals after the master negotiations (Ratner, 3739, 3742, 3757–59; Olson, 4702; Muehlenkamp, 4782). At Michael Reese Hospital, the service and maintenance unit and the business office clerical unit bargain jointly but have separate committees, contracts, and stewards (WS Gray).

There is no evidence of a trend toward coordinated bargaining (Shea, 5217–18). In New York City, there has been some movement away from the citywide approach of Local 1199; there is pressure to go back to each hospital after the master agreement to get separate provisions on local issues (Ratner, 3739).

Although some industry commentators now request broad-based units, there are a number of instances in the record in which employers sought, for example, to have RNs in a broad unit with other professionals, and then raised the question of effectiveness of bargaining representation, or appropriateness of unit. See section V, Registered Nurses, *infra*. To the extent that employees represented in different units may wish a number of years later to re-group as a single larger entity for purposes of conducting negotiations, nothing in the rule would interfere.

In sum, the record fails to demonstrate that finding a limited number of occupationally-homogeneous units to be appropriate would inhibit functional integration on the job, increase strikes, jurisdictional disputes, or wage whipsawing, or substantially increase costs to industry or to workers. Rather, we believe that finding only two broad units appropriate would unduly hamper organizing and effective bargaining, and would not carry out Congress' intent in the health care industry.

V. Registered Nurses

A. Introduction

In the Notice of Proposed Rulemaking, the Board tentatively determined that RNs constituted a separate appropriate bargaining unit in acute care hospitals having more than 100 beds. 52 FR 25146. Among the reasons assigned were that RNs:

(a) Work around the clock, 7 days a week;

(b) Have constant responsibility for direct patient care;

(c) Are subject to common supervision by other nurses;

(d) Share similar education, training, experience and licensing not shared by other employees;

(e) Have the most contact with other RNs; and

(f) Have a lengthy history of separate organization and bargaining.

Much of the evidence taken at the rulemaking hearings concerned the RN classification. As discussed in more detail *infra*, we have decided not to differentiate between hospitals having more than 100 beds and those having fewer. However, in other respects, after carefully considering the evidence amassed, we have determined that RNs appropriately constitute a separate bargaining unit.

B. The Record Supports a Finding That RNs Constitute a Separate Appropriate Unit

1. *Work schedules.* There was some evidence of selected other professionals who, at certain hospitals, might be scheduled to work evening and nighttime shifts (Comment 72, McCarthy; Comment 82, Humana). However, the evidence was overwhelming that only RNs have a professional responsibility which requires them as a group to be on duty 24 hours a day, 7 days a week (Chow, 3107–08; Ballard, 55; Schauer, 3155; Ratner, 3735; Graham, 4841–42). They are the only professionals regularly required to work overtime, including as much as two 8- or 12-hour shifts (Bachus, Chi I 144; Wilson, 5074, 5091).

2. *Responsibilities.* Each professional classification obviously possesses its own singular job function and responsibility. However, whereas other professionals specialize, and have intermittent contact with patients, nurses are unique in that their profession demands continuous interaction with patients (Dumpel, 3277–78; Chow, 3108; Ballard, 55, 57–58, WS at 7; Foley, 446). Nursing practice involves the nursing process by which nurses assess patients, as reflected in the nursing practice acts (Comment 240, ANA, Kalisch; WS Foley at 4; WS Ballard at 9–10). RNs continually monitor all patients to be sure that physicians' orders are being carried out and that treatment procedures are not proving harmful (Ballard, 55–56; Bullough, 4627–30). RNs must be alert for errors made by other professionals; for example, if another professional, e.g. a pharmacist, dispenses medication in an improper dosage, the overall responsibility rests with the RN who, if she administers it, is also responsible (Reierson, 3606–07; Sackman, 3586). The RNs' special responsibility is based on a cluster of knowledge which they possess, as opposed to a single skill (Bullough, 4629–30). One 1982 study by Posavac showed that the "perception of nursing care is the single most crucial aspect in the overall rating of hospitals by patients" (Fine, 3143).

3. *Supervision.* All acute care facilities have an organized department of nursing, and that department is supervised by a nurse (Ballard, 52–53). For this reason, the vast majority of nurses in hospitals are ultimately responsible to the director of nursing (Ballard, 67; Lipari, 3703; Gilmore, 4909–10; Comment 293(b), Jones: 3 RNs out of 99 not in nursing department; Comment 293(g), Soltis: 11 out of 200 not in nursing department). The evidence did indicate that in some instances nurses work in departments other than nursing and are subject to supervision by these other departments, such as ambulatory services, discharge planning, home health care, and anesthesiology (Graybill, 4149; Comment 139, S. Baltimore Hospital). However, even in the few instances where a nurse might be hired into another department and report to someone other than the director of nursing, the director of nursing is still responsible for the delivery of nursing care (Ballard, 67–68; Indelicato, 3680).

Product line management is a system of organization by type of service and in response to the DRG method of payment

(Dalstrom, 332; Houston, 4024; Kennedy, 5552). It is argued that, with this type of structure, nurses have more in common with those in their product line than with other RNs with whom they have little contact (Dalstrom, 336–339). Ordinarily however, it results in some RNs' being responsible to a functional manager of a project and to nursing heads for clinical issues (Comment 293(i), Feldsine, at 2–3). Product line management is a financial tool; it does not result in changes in interaction among hospital workers (Kennedy, WS at 6–7). As noted *supra*, nurses overwhelmingly continue to report to nurses (Dalstrom, 335: Only 10% of RNs not members of nursing division, but no showing that not supervised by an RN).

4. *Wages.* The labor market for nurses is distinct from that for other professionals (Gonzalez, 4356). Thus, nurse salaries are low, even within the framework of hospital compensation (Corbett, 3332, 3335). There is no pressure from outside the hospital industry forcing up wages, as for example is the case with pharmacists (ANA Br. 97). Moreover, the overwhelming percentage of nurses are women, and there is evidence that this has contributed to the separateness of the RN wage structure and the distinctiveness of their concerns (Muehlenkamp, 4779; Saporta, 5114–15). When nurses and employers bargain about wages, they look to wages of RNs at other hospitals, not at wages of other professionals (Patek, Chi I 78–79; Absalom, 3316–18). Finally, RN career ladders are very short in terms of pay, quickly levelling out after relatively brief experience (Rosen, 4671). Hospitals recognize the separate RN market by having nurse recruiters; no similar position exists for other professionals (Ballard, 65; Reierson, 3608–09).

Nurses traditionally conduct wage negotiations from these unique disadvantages despite the demand for their services (ANA Br. 99). In fact an employer may insist on a separate wage scale for RNs in an all-professional unit (Comment 51, Castrop: employer re-opened wall-to-wall contract at O'Bleness to increase RN wages only).

5. *Wage whipsawing or leapfrogging.* The record evidence based on actual experience shows that wage leapfrogging has not occurred in the hospital industry (Ratner, Local 1199, 3744; Friedman, Local 1199, 5041, 5045; Absalom, CNA, 3316–3317; Muehlenkamp, NUHHCE, 4775; Twomey, WS at 6, Hosp and Prof Allied Employees of NJ; Schmidt, Oregon Federation of Nurses, AFT, WS at 4; Shea, SEIU, WS at 13–14). The one example offered by the industry as evidence of leapfrogging (involving RNs) occurred 20 years ago in California and concerned the adjustment of wages for RNs who had been underpaid for a long period of time as compared to other hospital employees (as found by a fact-finding panel appointed by the governor). Even this adjustment did not result in any disruption of patient care. Moreover, other professionals did not obtain higher wages or benefits thereafter as a result of the RN unit adjustment (WS Absalom, at 7–8; 3286–87).

The fact that RNs are in a different labor market mitigates against leapfrogging (Shepard, 4959–60). Special considerations such as the nursing shortage, recruitment, and retention are not concerns of other professions and have not been carried over into other units (Absalom, 3316–3318). In addition, there are certain limitations or rigidities in the financing system which preclude the pass-through of spiraling wage increases. A significant limitation is found in the Medicare and Medicaid reimbursement rates. These rates play a prominent role in the economics of hospitals, and are set in a regional area in accordance with the general wage pattern set by the most influential local union and its employers. Thus, there is little incentive for unions to engage in whipsaw strikes and efforts to leapfrog the pattern of wage increases. (Friedman, 5044–45.) Finally, it appears that concern about the potential for leapfrogging could be ameliorated by uniform contract expiration dates. However, the evidence shows that hospitals have declined to accept union proposals to this end. (Henry, 3074–76; Absalom, 3318–19; Sackman, 3586; Willman, 4480–82; Clark, 4685.)

6. *Education, training, experience and licensing.* All professions require specialized education and training (AHA Br. 15; Mixon, Chi II 274), and are subject to prescribed standards of practice (California Health And Safety Code Sec., cited in AHA Br. 15; Comment 248, Cedars-Sinai Medical Center). However, in addition, nurses must pass state licensing exams, which are uniform throughout the country, after graduating from an accredited nursing school. A candidate who passes the exam is competent to practice throughout the country. (Reierson, 3597.) Nurses are required to follow, inter alia, state nurse practice acts, and no other health care worker may function as a nurse under nurse practice acts (Ballard, 56, 57).

RNs' licensing requirements may actually conflict with the requirements and practices of other professions. For example, as previously indicated, RNs fill out incident reports on mistakes in medication dosages made by other workers (Reierson, 3603; Sackman, 3586). This type of responsibility may result in antagonism between the RNs and other professionals which might impede collective bargaining by the professionals as a group.

Several states mandate continuing education for nurse relicensure. Only social workers and pharmacists are subject to such requirements in more states than RNs. (ANA Br. 48; Ballard, 54; Lumpkin, 87.)

7. *Interaction.* RNs work in close and continuous contact with one another within the same hospital (WS Foley; Owley, 4377–78). Moreover, sometimes RNs at different hospitals have more contact with one another than with the other professionals in their own institutions (Owley, 4378; Schauer, 3156–58). With respect to RNs' interaction with non-nurse professionals, while there is some contact, it is not regular and recurring. There are a variety of factors which help to explain why interaction among RNs and non-nurse professionals is limited. For one thing, while there was testimony that there is a crossover of duties between RNs and other professionals (Thompson, Chi II 55–58), there was also testimony that licensing and other regulations clearly prevent RNs from doing much of the work of other professionals and other professionals from doing RN work (Lipari, 3702; WS Dumpel & 3279). Moreover, non-nurse professionals generally are located away from patient units where RNs are located. For example, in Local 1199-organized hospitals, most pharmacists are located in self-contained units, usually in the hospitals' basements. (Crisafulli, 3712–14.) Moreover, RNs typically have different working hours (Indelicato, 3681; Ahmed, 3707). As noted by the ANA, the contact RNs may have with respiratory therapists is not material since respiratory therapists consistently have been found to be non-professionals. See for example *Samaritan Health Services,* 238 NLRB 629, 638 (1978); *Barnert Memorial Hospital Center,* 217 NLRB 775, 779 (1975).

The point is made that RNs in many cases have more frequent contact with other professions than those other professions that the Board proposes to place together have among themselves (AHA Br. 20–21, citing *Long Island Hospital,* 256 NLRB 202 (1981), and other Board cases). However, this point militates more against grouping of the

different professionals than it does toward grouping the RNs with other professionals.

8. *The team concept.* Much evidence was offered during the proceeding concerning the team concept. See also section IV (B)(1), *supra.* After carefully considering this evidence and the parties' arguments in connection therewith, we conclude that the fact that some hospitals utilize the team concept does not detract from the separate appropriateness of RN units.

There are two types of teams found in hospitals. The first is the nursing team which consists of RNs, LPNs, and aides. This type of team is found throughout the industry. However, as this team contains only nurses and non-professionals, and the Act provides that professionals are entitled to a separate unit if they choose, the nursing team is not relevant to the issue presented.

The second type is the multidisciplinary team which contains various classifications of professionals and non-professionals and has been utilized in the health care industry since the early 1900's. Employers unsuccessfully relied on the existence of teams in an attempt to defeat the 1974 Amendments. (ANA Br. 126, citing Ohio Hospital Association testimony.) The team concept remains non-persuasive for several reasons. First, the evidence at the hearing established that many hospitals do not even use the team concept (e.g., McCullough 4819; Gilmore 4910). Moreover, except for some specialized hospitals, e.g., children's hospitals (Sokatch 4194, 4199; Gallagher, 3539, 3543–46), those hospitals with teams often have no more than six or seven teams (Thompson, Chi II 14–15; Mixon, Chi II 294–96; Graybill 4172–86; Comment 283, Leavenworth), with two to eight members on a team (Thompson, Chi II 72; Mixon, Chi II 277; Gallagher, 3543–45). Thus, within the limited number of hospitals that use teams, only a minority of nurses and other professionals participate on the teams (Bachus, Chi I 129–132, most teams are on the management level). Although one comment stated generally that the downsizing of staff has led to more teamwork (Comment 263, Huntsville Mem. Hosp), this was not supported by other specific examples.

While members of teams may have daily interaction and weekly formal meetings (Comment 78, Greater Cincinnati; Comment 288, Graybill, Children's Medical Center, Akron), there was also testimony that the interaction of RNs and other professionals is limited in certain ways. For example, team members only interact with the few other members on their teams. Additionally, other duties of RNs may prevent or limit their actual participation in an assigned team program (Schmidt, 3627, 3635; Bachus, Chi I 129–130; Reierson, 3609–10). More importantly, the fact that the RNs may interact and work with other professionals on teams does not alter the separateness of their identity. The team approach is a process to ensure that the elements of patient care are organized. The evidence was uncontradicted that it does not alter each licensed professional's responsibility for his or her individual scope of practice. (Ballard, 56; Twomey, 131; Wilson, 5095; Bachus, Chi I 129–130.) Nor does participation by some RNs in team care affect wages, hours, benefits, training, skills, or functions of RNs on or off the teams (Graybill, 4174–75; Houston, 4044–45).

Conversely, separate RN units were not shown to have interfered with team care (Gallagher, City of Hope, 3540; Bullough, 4651 and 4653; Houston, Sacred Heart, 4031, 4038, 4048). The industry offered only unsubstantiated speculation that team care would be adversely affected; e.g., one witness testified that the amount of interplay, the exchange that goes on minute-to-minute in critical situations, could be damaged significantly (4185–86). However, at City of Hope, a specialized cancer hospital with a large number of teams and a separate RN unit, the teams remained able to deliver a very high level and quality of care. (Gallagher, 3540 & 3543; Bullough, 4653. See also Thompson, Chi II 9, 86–87: no evidence that separate RN representation at her Ohio hospital has made nurses less able to function as a team.)

9. *Cross-training and interchange.* Because of licensure limitations, cross-training does not take place between RNs and other employees (Lipari, 3702; Dumpel, WS & 3279). Hospital codes also preclude replacement of RNs by other professionals (Rosen, 4666). It logically follows that the extent of interchange between RNs and other non-nursing professionals is limited not only because of RN licensing limitations but also because of the licensing requirements of other professional employees. There was testimony that RNs will perform functions of other "professionals" when the latter are not available, e.g., moving patients instead of physical therapists, or doing respiratory therapist work at night and on weekends (Comment 78, Greater Cincinnati; Comment 198, Marshalltown Medical Center). With respect to the first example, the performance of non-professional tasks such as transferring patients to wheelchairs is not relevant to interchange between professionals. Similarly, respiratory therapists consistently have been held by the Board to be non-professionals. Finally, other examples of interchange, such as medical technologists' watching the heart monitor while a nurse is on break (Houston, 4041–42, 4026–27), appear to be minimal. It was also stated that both pharmacists and RNs dispense drugs and medications; however, pharmacists typically formulate medications and advise on proper medications while RNs administer them (Thompson, Chi II 55–58).

10. *History of representation and collective bargaining.* The ANA, representing RNs, stated that the RNs' desire to be organized to protect their interests as well as their patients' interests began nearly 100 years ago, and persisted through the onset of collective bargaining and the original Taft-Hartley exclusion of employees of non-profit hospitals from federal labor law (ANA p. 74; see Comment 240, attachment, Kalisch, Twelve Key Steps in the Process of Professionalization of American Nursing, 1854–1987; Comment 293, ANA, Flanagan). AHA contends that separate bargaining by RNs does not reflect a freely established pattern because, prior to the 1974 amendments, it was to some degree based upon considerations of the then-current law in each state and because collective bargaining primarily existed only in a few isolated parts of the country and thus could not be deemed representative. Moreover, the AHA contends, subsequent to the 1974 amendments such bargaining was established pursuant to the direction of the Board.

Regardless of what might first have provided the impetus, RNs have for many years exhibited a strong desire for separate representation. Even during the period following *St. Francis II*, RNs consistently sought separate RN units but were forced to organize into units with other professionals or face lengthy, costly, and fruitless litigation (Saporta, 5127–28; Splain, 5273–74; Muehlenkamp, 4764–67; Wilson 5069). Although forced to include other professionals, the organizing drives were strikingly similar to prior nurses-only campaigns. Testimony indicates that the campaigns were led by nurses, issues prompting organization were nurses' issues, and the bargaining was performed by nurses, often with no participation by other hospital professionals. (Gonzalez 4356; Splain, 5293; Lumpkin, 99–100; Patek, Chi I 54–55; Chow, 3108; McCullough, 4811; Gilmore, 4894; Shepard, 4927.) Moreover, comments from a number of hospitals

indicated they have not had problems bargaining with separate RN units (Comment 79, Baptist Hospital; Comment 105, Mass. Hosp. Assn: 2 examples; Comment 121, Central Michigan).

The AHA makes the point that the more recent history of collective bargaining shows that all-professional units nonetheless are viable, and the record offers some support for this position. Thus, even some RN-only unit proponents have testified that the interests of all professional groups have been adequately represented in bargaining for an all professional unit.[21] (AHA Br. 24.) However, while bargaining could undoubtedly proceed in any one of a number of configurations, this does not necessarily answer the question whether a separate unit of RNs might not also be appropriate; or better reflect the wishes, needs and interests of RNs, other professionals, and perhaps even health care providers themselves.

The testimony shows that not only have the RNs desired separate representation (Saporta, 5127–28; Splain, 5273–74; Muehlenkamp, 4764–67; Wilson, 5069), but other professionals do not appear to react favorably to their inclusion with RNs. As noted *supra*, the other professionals often do not participate in the organizing campaigns and are hostile to being included in bargaining units with RNs. As an example, when Capitol Hill Hospital demanded inclusion of other professionals, the other professionals complained, became hostile, and some even requested separation (Gonzalez, 4351–53). In Langlade Memorial Hospital, Wisconsin, other professionals forced into a unit with RNs tried to decertify the union but were outvoted by the RNs (Owley, 4376).

The main concern of the non-nursing professionals is of being overwhelmed by the large number of nurses and not having their concerns given priority. RNs are the largest professional group in any hospital. In fact, RNs constitute approximately 23% of the hospital workforce (WS Schoen, Table 1, citing data from AHA publication and BLS Hospital Wage Survey.) They may outnumber other professionals by a ratio of 4 to 1 or more. (AFL Br. 92; Twomey, 123–125, 128–129; Gafni, 133–135; Thompson, Chi II 58.) The non-nurse professionals are also concerned that RNs could ignore their interests when they conflict with RNs' (Comment 134, American Physical Therapists Assn). A number of non-nursing professionals who testified at the hearings confirmed the lack of interest which RNs exhibited toward their circumstances, and the fact that, despite their different professions, they were able to achieve collective bargaining in all-professional units, excluding RNs and physicians. See section VII, Other Professionals, *infra*. Evidence showed that even when made part of a unit which wins an election, other professionals sometimes do not participate in negotiations or come to union meetings (Schauer, 3154; Wilson, 5070; Patek, Chi I 54, 55–67 and WS 6–7). Issues discussed during bargaining tend to be those of interest to nurses (Wilson, 5073). Moreover, most grievances at one hospital were from nurses on nurse issues (Bachus, Chi I 122). There is a concern that if forced into units with RNs and RNs do not want representation, other professionals would not have enough votes to obtain representation (Owley 4376–77; Ahmed, 3707–08).

The AHA argues that the size of the RNs' group relative to other professionals should not be a consideration in determining whether to have an all-inclusive unit, and that this is a clear departure from the Board's general unit determination analysis in which the Board routinely has included small ancillary groups in units with one or more large classifications that constitute the bulk of the unit. We acknowledge that units frequently are an amalgam of other special interest categories. See, e.g., *Airco*, 273 NLRB 348 (1984). Nonetheless, the Board routinely also finds appropriate separate groups whose interests have been shown to be sufficiently distinctive. See, e.g., *Pacesetter Corp.*, 241 NLRB 1150 (1979) (separate unit of over-the-road drivers found appropriate); *Newburgh Mfg. Co.*, 151 NLRB 762 (1965) (separate unit of garment cutters found appropriate.)

Some employers argued that the real reason unions want separate RN units is that their constitution and by-laws do not permit them to organize other professionals (Comment 306, Herrin). However there was testimony that some nurses' associations have amended their by-laws to allow organization and representation of other professionals (Gonzalez, 4362; Sackman, 3578). In addition, there was testimony that some employers' true concern with allowing separate RN units is not unit fragmentation but defeating unions. Several witnesses testified that their employer demanded inclusion of other professionals with nurses when nurses wanted separate representation, but then told the RNs they should not include other professionals who did not have their interests. These same employers told the other professionals that they should vote against the "nurses' " union because they would be a minority and nurses could not adequately represent them, thus contradicting the argument of many employers in this proceeding. (Gonzalez, Capitol Hill Hospital, 4351–53; Gilmore, 4896–97; Absalom, 3315; Saporta, 5134, Sackman, 3580–84; WS Splain at 18–19; Wilson, 5096–97.) Employers have also requested the inclusion of lab technicians with RNs, then challenged their inclusion (Wilson, 5087–89).

In several instances, employers who earlier had insisted on the inclusion of all professionals later opposed bargaining with the RNs and other professionals in a single unit when the nurses' union was selected as bargaining representative of an all-professional unit. For example, after the D.C. Nurses Association won an election in a broader unit demanded by the employer, the employer at negotiations proposed removal of non-RNs from the agreement, saying its earlier position had been based on "tactics." (Gonzalez, Capitol Hill Hospital, 4355; see also Lumpkin, Shands Hospital, 95: hospital asked to amend unit to separate RNs from non-RNs; because of problems with recruiting and retaining RNs, the employer needed to set innovative scheduling, overtime pay for shifts, premiun pay.)

11. *Collective bargaining interests.* There are a number of issues of unique concern to nurses in collective bargaining (See Comment 240(b), submission of David Martin, RN, ANA senior staff specialist for labor relations, affidavit analyzing 190 RN-only unit contracts representing nearly every such contract negotiated in 1986). While there may be examples of how special concerns of the RNs have been addressed in all-professional units, this does not necessarily demonstrate that RNs and other professionals have large numbers of common interests. Nurses can emphasize these issues in bargaining regardless of the concerns of non-RN professionals because RNs would constitute 80% or more in a typical unit (WS Shea at 22), and often 100% of those willing to participate in bargaining (Gonzalez, 4355–4356).

Moreover, that unions are capable of addressing special concerns of the RNs in all-professional units does not negate

[21] That other professionals have not filed unfair labor practice charges or grievances against unions where nurses predominate, charging breach of duty of fair representation, does not mean other professionals are satisfied with representation. A breach of the duty of fair representation is found only where conduct is arbitrary, discriminatory or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

the fact that many of these issues are unique to RNs and that separate representation would frequently provide a more efficacious and just means for responding to their concerns. For example, RNs alone have recurring concerns with respect to floating, i.e. being temporarily transferred from one unit to another to cover understaffed units (Schauer, 3115). RNs have bargained for mandatory orientation both in their own unit and before floating to other units (Schauer, 3115; Comment 240(b), Martin affid.: orientation provision found in 83 of 1986 contracts). Some organizations representing nurses have created "Assignment Despite Objection" forms to be used when nurses are asked to work in a unit or perform a function for which they feel unprepared (Graham, 4827; Shepard, 4929–31). Floating and orientation generally do not concern other hospital professionals since they typically are not required to float to areas where they may be unqualified (Saporta, 5114; Indelicato, 3681). Moreover, other hospital professionals are not as concerned with staffing in general because they do not have constant patient care responsibilities like the RNs and because they are not in critically short supply (Gonzalez, 4364: at Capitol Hill, staffing was a major concern for RNs, not at all for other professionals).

The evidence shows that scheduling issues are of much greater concern to RNs than to other non-nursing professionals. RNs are virtually alone in their concerns with respect to mandatory overtime and double or rotating shifts, or evening, night and weekend shifts, all of which are said to increase the likelihood of nurse error. (Bachus, Chi I 144; Lipari, 3697; Korn 4860–61; Chow 3111, Ballard, 62, 75.) There were only isolated examples of non-nurse professionals working late shifts or weekends. Many other professionals, like social workers, work primarily day shifts during the weekdays. (Roth, 3151: no pharmacist, social worker or physical therapist at night, skeleton crew for respiratory therapy; WS Foley at 6–9: social work, physical therapy, doctors, offices are all closed by 6 p.m., some evenings only RNs provide primary care.)

Collective-bargaining agreements have addressed these issues by, e.g., attempting to limit mandatory overtime, rotating shifts, etc. (Comment 240(b), Martin affidavit; Chow 3110–11.) Collective bargaining agreements covering other professionals do not usually include such provisions (Friedman, 5055: Local 1199 contracts for medical technologists do not prohibit mandatory overtime).

Hospitals have difficulties attracting nurses to work the less desirable evening and night shifts. Ninety-eight percent of contracts in the ANA study provided higher wages on evening and night shifts; 57% offer some form of alternative scheduling designed to attract RNs. (Comment 240(b), Martin affidavit.) Other professionals generally view issue of premiun pay and alternative scheduling as less important or irrelevant. This in part is due to the fact that non-nursing professionals usually do not work night shifts and many do not work evening shifts (Patek, Chi I 55: non-RN professionals had grave concerns about bargaining over premium pay for fear that this would mean that they would be required to work shifts they had not worked before. See also WS Lumpkin, supra at 8: re: innovative scheduling for RNs; Gilmore, 4907.)

12. *Education.* Nearly every surveyed contract has provisions for continuing education which is mandated in 15 states (Comment 240(b), Martin affidavit). Continuing education typically presents different issues for nurses, who work around-the-clock schedules and have difficulty attending the courses, which are often given evenings, nights, or weekends. Thus, other professionals typically bargain about continuing education by seeking more money; RNs seek time off to attend as well as tuition. (Lumpkin, 86–88; Foley, 449–450.) This in itself would not justify a separate unit as such concerns could, of course, be accommodated in larger-unit bargaining; however, they are but one of a congery of concerns and special problems that make nurses a substantial, unique group.

13. *RN bargaining units and strikes.* There is testimony that there have been many strikes by nurses (King, Chi II 41, 46, 28; Whelan, Chi II 59–61, 85; Comment 304: one-third of 20 strikes at Kaiser since 1974 amendments are in RN-only units), and that some of these strikes have lasted for a long time (e.g., Ashtabula Hospital, Ohio, 572 day strike: King, Chi II 28, 59–61). However, according to available FMCS data, only 3.3% of all health care contract negotiations, including nurse bargaining, resulted in strikes. The strike percentage in any given year never exceeded 5.1% and fell below 2% in several years. Moreover, during the 1984–1987 period, strikes in the health care industry occurred far less often than in other industries, 1.5% v. 2.4%. (WS Schoen at 28; AFL–CIO Exh. 6.)

There was testimony that RN strikes are particularly disruptive because RNs constitute the largest group of hospital employees. For example, there was a strike of 6,000 nurses in Minneapolis-St. Paul in 1984 over job security (Patek, MNA, Chi I 51, 63). But there was also testimony that where strikes occurred, the hospitals continued operation (Whelan, Chi II 59–60; Viat, 3471). Moreover, we must also be mindful that in an all-professional unit, RNs, because of their predominance, could generally obtain an affirmative strike vote even if all the other professionals were opposed. Because such a strike would involve all professionals in the hospital, greater disruption of hospital services would result than with a separate RN unit. (ANA Comments 173.) Finally, for 18 years ANA had a no-strike policy (Shepard, 4931–32; Comment 293(k), Flanagan, *Collective Bargaining and the Nursing Profession* at 14–15), and CNA has adopted a standing policy that in the event of an impasse in arbitration, it will offer binding arbitration before resorting to strike action (Absalom, WS at 8–9, 12–13, 15–16 & 3286–98: 1974 strike resolved by FMCS; 1978 shift rotation disagreement resolved by advisory arbitration; 1980 disagreement on nursing shortage resolved by mediation-arbitration).

The AHA argues that the history of the RN-only unit bargaining does not support a conclusion that potential work disruptions are not increased by creation of multiple professional bargaining units, since the overwhelming majority of facilities where RN units exist have no other professional units (AHA Br. 24). However, because in all likelihood the latter phenomenon would continue to exist, this argument is not entitled to great weight.

Some commentators argued that multi-professional units may lead to sympathy strikes (Bennett, 3045; Comment 13, Corkin). However, most no-strike clauses in hospital contracts forbid sympathy work stoppages, and there was evidence it is common for RNs to cross picket lines set up by non-nurse health care workers (Sackman, 3585; Lipari, 3696; Korn, 4889; Roth, 3152–53). If sympathy strikes were a problem, it appears that they could be significantly reduced by mandating common expiration dates for all hospital contracts, a proposition which, the evidence showed, hospitals frequently or even universally have rejected (Absalom, 3318–19: Affiliated Hospitals refused to allow new expiration date to coincide with expiration of other contracts; Clark, 4683–85: no common

expiration dates for initial contracts; Abelow, 249–50: no push from any parties to coincide RN contract expiration with master contract of League of Voluntary Hospitals; Lipari, 3697: employer opposes common expiration dates).

14. *Jurisdictional disputes.* The record does not reveal a single jurisdictional dispute between unions of professional employees (Fine, 3156–3158). Witnesses who asserted that such jurisdictional disputes would arise did not substantiate their claims (Dalstrom, 339; O'Connell, 440; Dauner, 3199; Emanuel, 3503–04; WS Cammarata at 7). In fact, the most typical job duty issues involving jurisdictional lines are between RNs and nonprofessionals, i.e., LPNs and nurses' aides (WS Shea at 14). These types of issues would arise even if the RNs were placed in an all-professional unit.

As was the case with regard to strikes, the AHA argues that an assessment of the impact of multiple professional units on jurisdictional disputes can only exist where there are two or more units represented by labor organizations in a facility, and there are very few such instances (AHA Br. 24). For this same reason, we believe the argument that there is a potential for jurisdictional disputes among professionals where a separate RN unit is given, is speculative. To the extent the record deals with this matter, it shows that any issues regarding the possible overlapping duties of professionals have in the past been fought out in the public arena. For example, attempts by other groups to perform some of the nurses' duties under their scope of practice in California were dealt with by the legislature. (Dumpel, 3278–79.) In any event, as noted *supra*, (see subsection (B)(9) on cross-training and interchange), interchange of duties between professionals appears minimal.

15. *Nursing shortage.* It is common knowledge, and the record substantiated, that currently there is an unprecedented and severe nursing shortage (Absalom, 3295; Shea, 5235; WS Schoen at 16, citing ANA Report on Hospital Nursing Supply). Some hospitals have delegated some traditional RN functions, not reserved to RNs by law, to employees with no RN training. Additionally, hospitals currently have more seriously ill patients (higher acuity) than historically reported. Less qualified nurses, and fewer nurses, will be forced to attend to more seriously ill patients, leading to a lower level of care and more stress for the remaining RNs who may then opt out of nursing. (ANA Br. 101, and articles cited therein.)

Nurses testified that they view collective bargaining, in their own unit, as the vehicle for improvement in their working conditions and for allowing them a voice in patient care (Ballard, 72; Lumpkin, 85–86). Additionally, hospitals are trying innovative proposals for nurses: opening contracts for them alone, raising wages, setting weekend differentials. Some think that if other professionals are included in units with RNs, problems could arise if such changes are also not implemented for non-nursing professionals. (Wilson, 5071; Saporta, 5116.)

It has been argued that the Board should not give special consideration to a group in temporary crisis or other groups will also make demands for separate units (Comment 65, Milford Hospital). However, while the evidence establishes that the situation is a serious one and appears to be growing more serious with time (ANA Br. 100–101, and articles cited therein), we view this as only one valid factor in determining the appropriateness of a unit limited to RNs. The concern that this will lead other professionals to follow suit is speculative, and insufficient reason to deny RNs, who have already established their unique concerns and a highly separate identity, a separate bargaining unit.

16. *Proliferation of units.* As has been documented elsewhere, the evidence in the record does not support the assumption that the recognition of RN-only units will lead to a demand by other professional groups to organize as separate units. In fact, as previously indicated, the AHA acknowledges in its brief that in the overwhelming majority of facilities where RN units exist, other professionals have not been represented in separate units. (AHA Br. at 24.) SEIU health care organizing director Splain concluded that 10 years of statistics show relatively little organizing in residual hospital units. There are 16 hospitals in Ohio that have a separate RN unit, and only one unit in which professionals other than RNs are represented separately. (King, Chi II 38–39; Shepard 4927.) Health care workers organize no more frequently in facilities where some workers engage in collective bargaining than they do in facilities where no bargaining units have been represented (WS Splain at 14–17). One witness testified that a typical hospital has an RN unit, an LPN unit or technical unit, a service and maintenance unit, and sometimes an operating engineers unit (WS Patek at 4).

C. Conclusion

We have carefully considered the evidence in the hearings as to how a separate RN unit, or, in the alternative, an all-professional unit including RNs, might fare, based on the realities of hospital operations, organizing, and collective bargaining. We conclude based on this evidence and the arguments advanced that a separate RN unit is appropriate for collective bargaining purposes.[22]

For many years, RNs, who constitute a significant portion of the health care workforce, have demonstrated their commitment both to their careers in the health care industry as well as their patients' well-being. During the time period following *St. Francis II*, it appears that RNs consistently desired separate RN units but were compelled to organize into all-professional units in order to avoid prolonged litigation. However, even when the RNs were forced to include other professionals in their units, the organizing drives were quite similar to prior nurses-only campaigns.

Moreover, it is apparent from testimony taken at the hearings that non-nursing professionals did not wish to be included in a unit with RNs. If we ignore the perspective of the smaller, non-nursing professionals group, i.e., the animosity expressed toward their inclusion with RNs as well as their concern that their "voice" will not be heard, then we are disregarding, at least in part, one of our major objectives. As previously indicated, the Board seeks to avoid finding too large a unit appropriate, as this may result in "too diversified a constituency which may generate conflicts of interest and dissatisfaction among fringe groups, making it difficult for the union to represent * * *." See section III, Standard To Be Applied, *supra*. This

[22] In making our decision on this issue, we have considered *St. Vincent Hospital and Health Center*, 285 NLRB No. 64 (Aug. 19, 1987), a fairly recent case in which we held in an adjudicatory proceeding that a separate RN unit was inappropriate. In so doing we found, *inter alia*, that all of the employer's professional employees "share common personnel policies and procedures and fringe benefits and have sufficient contacts and interaction to support the finding that the smallest appropriate bargaining unit is one consisting of all of the Employer's professional employees." *Id.*, slip op. at 13. Having now had the opportunity to consider the substantial empirical evidence adduced in this rulemaking proceeding, we have a far better understanding of the RNs' training, functions, interests, and involvement in hospital operations, and of the actual and potential ramifications of each type of unit. For the reasons stated in this section, were we to apply the empirical evidence presented in these hearings, we might well reach a different result in *St. Vincent*.

latter point appears to be a concern of nursing and non-nursing professionals alike, and is one reason we have decided to permit RNs to seek bargaining rights apart from other health care professionals.

There was also testimony that would lead us to believe that some hospital employers' true concern with prohibition of separate RN units was not possible fragmentation but rather defeating organization. This was demonstrated by evidence of, *inter alia*, employer opposition to bargaining with the RNs and other professionals in one unit when an all-professional unit was finally certified, despite these same employers' earlier efforts to require that all professionals be included.

The distinct functions and collective bargaining interests of RNs compel the conclusion that a separate RN unit is warranted. RNs are a unique group in that their profession demands continuous interaction with patients. Additionally, because of licensure limitations, other professionals may not perform RN work and vice versa. RNs have a separate labor market, and scheduling issues are more of a concern. These factors and others discussed *supra* support a finding that collective bargaining by RNs as a separate unit should be permitted.

The industry has contended that adverse consequences would follow having separate RN units, such as strikes, jurisdictional disputes, and proliferation of units. The testimony proffered at the hearings has satisfactorily alleviated any concern we had over these possibilities.

Finally, we are mindful of the growing problem involving the nursing shortage. While separate representation for the RNs does not provide the complete solution to this problem, we believe that it is an important step toward making the nursing profession a more attractive employment opportunity as the separate concerns of RNs are addressed more directly in a separate RN unit.

VI. Physicians

In our Notice of Proposed Rulemaking, we provided for separate units of physicians in acute care hospitals having more than 100 beds. Although we did not anticipate the formation of many such units, we stated we would permit them because of physicians' separate education, training, and skills, and particularly because of physicians' unique position as the ultimate supervisors of patient care.

As discussed *infra*, we have decided not to differentiate between hospitals having more than 100 beds and those having fewer. However, as with RNs, see section V, *supra*, the evidence produced during this proceeding supported the proposed separate unit of physicians.

Doctors have considerably more training than other professionals, i.e., four years of medical school plus two to six years of post-graduate residence training, working as student residents in hospitals under the tutelage of licensed physicians (WS Cornfield).

Doctors have the singular responsibility of directing all other patient care employees; the JCAH charges doctors with overall responsibility for the quality of professional services (Robinson, 3650–51; WS Todd at 4–5, citing 1987 Accreditation Manual). Malpractice claims are filed against doctors because they are responsible for medical treatment (Robinson, 3652). The AHA contends that all professionals are held responsible for malpractice (AHA Br. 30); while we do not doubt the truth of this assertion in some circumstances, the AHA offered no details.

It is common knowledge that doctors earn substantially more than other professionals. They are frequently salaried, entering into individual employment contracts with hospitals rather than having an overall wage scale applied to them. (Comment 94, Somers; Robinson, 3652; NYS Federation of Physicians' and Dentists' position paper Exh. D.)

Supervision of doctors is limited and is generally done by other doctors (Robinson, 3651; Comment 293, Feldsine). While we recognize that other professionals are also commonly supervised by their peers (Comment 71, Kowalski, St. Mary's Hospital), as indicated doctors are ultimately responsible for the care given patients.

Doctors, of course, work with other employees, particularly on teams, or committees (Comment 137, McDonough Hospital; Mixon, Chi II 291; Comment 248, appending statement from Spitzer of Cedars-Sinai). However, we are persuaded by the evidence that the team approach does not change the duties of doctors, which are limited by law. Other employees are not permitted to do work within doctors' scope of practice. (Todd, 4348; Comment 269, Todd, AMA.)

Aside from the other factors noted, doctors have particular interest in bargaining about medical education, malpractice insurance, and input into patient care decisions (Robinson, 3655). They have little interest in the issues of special concern to RNs, such as floating, per diem, uniform allowances, overtime, etc. (NYS Federation of Physicians' and Dentists' position paper, Exhs. B, D, E, and F), and are outnumbered by nurses at a ratio of at least 15:1 (Todd, 4324, 4328), and perhaps 20:1 (AHA Br. 28). We are concerned that if doctors were forced to be included in the same unit with nurses and other professionals, doctors' interests would be overwhelmed (Todd, 4324). Florida, after 10 years, removed doctors from an all-professional unit in state facilities because of money considerations (Lumpkin, 100, 111–12). In one wall-to-wall unit including doctors, the hospital wanted raises just for doctors because of recruitment problems; the union opposed this because it would give raises just to one group in the unit (Robinson, 3654–55). A number of employers similarly expressed concerns about putting physicians in units of other professionals (Comment 94, Somers, attorney to many health care facilities; Comment 304, Kaiser Permanente; Comment 1, Lancaster Fairfield Community Hosp.; Comment 17, Middletown Regional Hosp.; Comment 48, St. Vincent's Medical Center, Bridgeport; Comment 141, Ayres). A wall-to-wall unit at O'Bleness Hospital did not include doctors (AHA Exh. 8D).

While the number of doctors employed in hospitals is small, and the percentage of employed doctors compared to other employees remains about the same, the actual number of employed doctors is increasing (Todd, 4335), and there is some evidence that doctors are organizing at increasing rates (AFL Exh. 4).

We are persuaded that the evidence weighs in favor of a separate unit for physicians, where sought. Thus, to include them with RNs and other professionals seems likely to lead to divisiveness and quite possibly to conflicts of interest. We have found no evidence that to grant doctors a separate unit would lead to repetitious bargaining, frequent strikes, or jurisdictional disputes. We believe the proper balance is struck in favor of a separate unit for all physicians, where requested.

VII. Other Professionals

In our original Notice of Proposed Rulemaking, we tentatively provided for a separate unit of all professional employees, excluding registered nurses and physicians, in acute care facilities having over 100 beds. We noted that section 9(b)(1) of the Act mandated separate representation for professional employees unless a majority of those employees vote for inclusion in a unit with non-professionals. In view of the provision for separate RNs' and physicians' units, it was and continues

to be necessary to provide for a separate unit of professionals excluding these two classifications although, as noted *supra*, we have decided to abandon the proposed 100-bed differentiation.

A number of so-called "other professionals" appeared in person at the hearings to testify. In general, they confirmed the lack of interest which RNs exhibited towards their circumstances, and the fact that, despite their different professions, they were able to achieve collective bargaining in all-professional units, excluding RNs and physicians. (Indelicato, social worker, 3673, 3678; Ahmed, laboratory technologist, 3705–06; Crisafulli, pharmacist, 3711, 3737.) In a comment, physical therapists expressed a preference for their own separate unit, but if placed with other professionals they would prefer that unit did not include RNs (Comment 134). Some fear was expressed that, because of their numbers, RNs (and also technicals) would overwhelm the other professionals if included in the same unit with them (Ratner, 3731–32; WS Cornfield, Table 1).

A number of "other professional" classifications work relatively independently, and have no immediate direct supervision (Ratner, 3735). They generally work the day shift, on weekdays (Indelicato, 3681), though some work on other shifts (see, e.g., Comment 275, Presbyterian Hospital). As a group they have high prestige within the hospital because of their superior education and training (WS Cornfield, Table 6).

Despite the desire expressed by some other professionals for their own separate units, and despite some history of separate representation of each profession, mainly in New York (see, e.g., Friedman, 5038), it seems clear to us that to provide for such additional units might create the proliferation which Congress meant to avoid. Moreover, despite the existence of some units combining technicals with other professionals (see, e.g., Willman, 4480, 4483, 4485, 4486; Shea, 5208; Robfogel, Chi. II, 224), Sec. 9(b)(1) of the Act prohibits such a combined unit, unless the professionals separately vote for inclusion with the non professionals. Accordingly, based on the above, we affirm the appropriateness of a separate unit of all professional employees, other than RNs and physicians.

VIII. Technicals

A. Introduction

In our Notice of Proposed Rulemaking, we tentatively determined that technical employees constituted a separate appropriate bargaining unit. Among the reasons we expressed were:

(a) That, in comparison with other non-professionals, they typically have significantly higher levels of skill and training, and are paid substantially more;

(b) That it has been the Board's consistent practice to approve separate units of technical employees; and

(c) That these separate units generally have met with approval from the courts of appeals.

After carefully considering the evidence presented during the rulemaking proceedings, we have determined that technical employees appropriately constitute a separate bargaining unit.

B. Technical Employees Are Separate and Distinct From Other Non-Professional Employees

1. *Education, licensing, training, and skills.* Technical employees are found in major occupational groups including: medical laboratory, respiratory therapy, radiography, emergency medicine, and medical records.[23] (WS McKinney, 2.) The evidence presented at the hearings demonstrates that technical employees perform jobs involving the use of independent judgment and specialized training, as opposed to service and maintenance employees who generally perform unskilled tasks and need only a high school education (AFL Br. 32, citing *Southern Maryland Hospital Center*, 274 NLRB 1470 (1985); McKinney, 5502–03, 5523–24; Colbert, 5020; WS Shea at 20). Testimony indicated that the gap between technical employees and service and maintenance workers actually is widening, with higher levels of technical skills more closely aligned to professional job categories rather than to other non-professional categories (WS Shea at 20; WS Schoen at 14 and 5175–76). Thus, technical employees occupy a high-prestige status distinct from other categories of non-professional employees because of the training requirements for their jobs (WS Cornfield at 12–13).

Technical employees further are distinguished by the support role they play within the hospital, and by the fact that they work in patient care. Examples of their work include: routine clinical tests performed by medical laboratory technicians; general respiratory care administered by respiratory therapists; and x-rays, ultrasound procedures, and CAT scans performed by various technicians. (WS Briguglio at 3.)

Contrary to the AHA's statement that "no evidence of separate or distinct employment attributes of technical employees was presented at the hearings" (AHA Br. 33), the evidence shows that all health care technical employees have significant additional education and/or training beyond high school, including: community college associate degree programs which provide math and science background beyond that which high schools offer (WS McKinney at 5); vocational training programs run by hospitals (WS McKinney at 7); programs at accredited schools of technology (WS Briguglio at 2); and, in some fields, a full 4-year college degree (Schoen, 5176; McKinney, 5477).

Further, the evidence indicates that most hospital technical employees are either certified (usually by passing a national examination), licensed, or required to register with the appropriate state authority (Willman, 4474), although laws regarding such licensure, registration, training and qualifications vary throughout the country (Ahmed, 3709–11).

There was evidence that some deskilling is occurring in the technical categories, reducing the need for higher skills in operating some equipment; however, the evidence further shows that it is not across-the-board (McKinney, 5485). Further, hospitals must purchase expensive and complicated equipment to deskill a task (McKinney, 5486); and where, for example, a technologist's work may be deskilled, it then would be performed by a technician rather than by a service worker (McKinney, 5513–14; Berliner, 5633–34).

2. *Wages, hours, and working conditions.* Although, in general, hospitals apply similar benefit and labor relations policies to technical and other non-professional employees, the evidence shows that the wages and hours of technical employees differ significantly from those of the other non-professionals (Mass. Hospital Assn., Comment 105). Technicians were shown to occupy the middle ranks in the hierarchy of health care workers, and the evidence presented regarding hospital pay scales reflects this standing (WS Schoen at 15). On the average, technicians earn $2,000 per year more than service workers in this industry (WS Schoen at 15, Table 1; Henry, 3084–85). While the wages of service workers are tied to the unskilled labor market,

[23] Although we note that historically, those employees who enter and decode patient data in medical records have been placed in service and maintenance units or overall non-professional units (see e.g., *Levine Hospital of Hayward*, 219 NLRB 327 (1975); Duke University, 226 NLRB 470 (1976)), the inclusion of "medical records technicians" in a separate technical unit may be litigated as a unit placement issue when it arises, on a case-by-case basis.

and those of business office clericals and skilled maintenance workers are similar to those of comparable jobs outside the industry, technicians' wages are tied to the earnings of the more highly skilled technologists with whom they work, and they generally earn approximately 75% of what the technologists earn (WS McKinney at 12–13, & 5479). Thus, management needs to provide higher entry wages for technicians than for service workers (Shea, 5238–39; Briguglio, 5300–01; Henry, 3084–88).

Technical employees work daytime hours, with evening, night, and weekend skeleton crews, while business office clericals work daytime hours and service and maintenance employees are staffed on a 24-hour basis (Colbert, 5016–17).

3. *Supervision.* The evidence indicates that technical employees usually have separate supervision from other non-professional employees; however, this may differ from facility to facility. For example, a supervisor of some technical employees may also supervise business office clericals; or a laboratory manager who supervises technical employees also may supervise some service and maintenance employees. (Mass. Hosp. Assn., Comment 105; Briguglio, 5300.)

4. *Contact with other employees.* Technical employees typically perform their work in laboratories or in technical departments, and not in patient care areas (AFL Br. 41; Booth, 3693), although the AHA's brief states that more hospitals are beginning to locate some laboratory facilities in patient care areas and technicals may have direct and continuing involvement with other categories of employees as well as with patients (AHA Br. 33). The tasks that technicals perform, such as processing and reviewing patient specimens, taking x-rays, EKGs and EEGs, are considered ancillary services, diagnostic in nature (AFL Br. 41). Technicals have no contact with business office clericals, and only minimal contact with service employees, but in a typical laboratory, work with doctors, technologists, clericals, and messengers (WS Briguglio, 4–5; Colbert, 5017–18; AHA Br. 33). The evidence shows that LPNs do work in patient care areas and provide direct patient care; however, the Board has found them to be appropriately included with technicals in light of their skill level and the requirement that they be licensed (AFL Br. 41 citing NLRB Exh. 5, revised).

5. *Cross training.* There is no temporary interchange, and little permanent interchange between technical employees and other non-professionals because of the difference in skills, the specialized functions of the technicals, and the differences in their education (Shea, 5221–22). Service workers typically have only a high school education or less and cannot be placed in technical positions in the absence of elaborate training programs (McKinney, 5481). Contrary to statements of industry witnesses who maintain that a service worker could take a six-week training program and be able to read EKG equipment (King, 5488), we are persuaded that technical training requires full or nearly fulltime education, and a high school education does not provide the mathematics and science background necessary (WS Shea at 21).

The evidence shows that cross-training programs are being offered at some hospitals and colleges; however, training prograns and funds to provide classroom instruction for hospital employees are rare in hospitals that are not unionized (Schoen Supplemental Statement). Thus, the majority of cross-training that occurs is among the technical categories themselves (LPNs doing EKG work formerly done by EKG technicians; medical technologists administering blood gases previously administered by respiratory technicians) (St. Anthony's Health Corp., Comment 142; St. Joseph Mercy Hospital, Iowa, Comment 243). Moreover, new technology has brought about a decline in technician jobs requiring only minimal training, while increasing the need for more intensely-trained technicians, thus widening the gap between technical employees, who are becoming more skilled and sophisticated, and service and maintenance workers (WS Schoen, 14–15; WS Shea at 21).

6. *Career paths and the labor market.* Technical employees have a separate career path and labor market. They do not seek to transfer into other types of non-professional jobs; rather, technicians may seek to become technologists in the same line of technical work; or LPNs may seek to become RNs. (O'Cleireacain, 5426; Ryan, 4738–39.) While some LPNs may become RNs through training programs, progression to technologist is more difficult for technicians because of the 4-year college requirement for many technological positions (WS Schoen at 15; McKinney, 5477). Their existing training is not considered a "building block" toward technologist status, without successful negotiations with licensing and accreditation boards (Schoen, Supplemental Statement). Thus, in addition to little mobility in their immediate workplace, it is also difficult for technicians to move out of that workplace. As long as they wish to practice their specialities, they must remain in the health care industry. (WS McKinney at 12.) Statistics show that 100% of job placements from technical programs are in health care occupations (Ryan, 4744). In contrast, business office clericals and skilled maintenance workers have great mobility outside the industry, as do unskilled service employees (O'Cleireacain, 5427; Marshall, 4018–19).

Evidence presented at the hearings shows that the labor market for technicians, which until recently was expanding steadily, is contracting (McKinney, 5474, 5478). Witnesses testified that with the introduction of cost containment techniques into the industry, the future of technical workers is in a state of flux. Further, even though new technology and equipment continue to be developed, at the same time hospitals are seeking to save on labor costs by replacing expensive, skilled employees, closing laboratories, and contracting out laboratory services. (WS McKinney at 13; Berliner, 5598.) Certificate of Need programs impose limits on the addition of new technology, further reducing the need for new technicians. For all of these reasons, training programs have become an important bargaining issue. (Schoen, Supplemental Statement.)

C. Organizing and Bargaining

The health care industry's bargaining unit proposals in 1973–74 would have allowed a separate unit for technical employees in hospitals (AFL Br. 31); and since 1974, the Board has continued to find separate technical units appropriate (NLRB Exh. 5, revised; *Southern Maryland Hospital Center,* 274 NLRB 1470 (1985)). As we noted in our proposed rule, court decisions have approved the Board's determinations as to technical units. See, e.g., *Watonwan Memorial Hospital v. NLRB,* 711 F.2d 848 (8th Cir. 1983); *NLRB v. Sweetwater Hospital Association,* 604 F.2d 454 (6th Cir. 1979). See also *Vicksburg Hospital v. NLRB,* 653 F.2d 1070, 1075 (5th Cir. 1981). Further, the evidence shows that technicals choose to organize in technical groups and not with other non-professionals (Booth, 3686–88). In the 588 hospitals in which a union affiliated with the AFL represents at least one bargaining unit, there are 311 separate technical units (including LPN units), and only 52 units in which technical employees and other non-professionals are combined into a single bargaining unit (AFL Br. 44 and Appendix A; Booth, 3688–90). In addition, LPNs organize with technicals who have the same training, education, licensure, and

certification requirements (Muehlenkamp, 4787).

Organizing drives are initiated by employees with specific concerns and grievances (WS Splain at 4; Sackman, 3592; Schmidt, 3628; Muehlenkamp, 4784). Other interests include professional conferences, training, and rotations (Colbert, 5019). At the hearings, no union organizer who was asked could recall any situation in which technical employees sought to include business office clericals or unskilled service workers, or vice versa (Olson, 4718; Muehlenkamp, 4784).

Technical employees generally choose to have separate initial contracts; however, they may agree, after the initial agreement expires, to engage in joint bargaining, but retain separate delegates for negotiations and for presenting separate issues (Booth, 3688; Colbert, 5021–22). Although industry witnesses maintain that the fact that technical employees organize and bargain their first contract as a separate unit does not justify finding a separate technical unit appropriate where subsequent bargaining history shows that they now bargain in broader units (St. Luke's/Roosevelt, Comment 224; AHA Br. 32–33), there is evidence that difficulties have arisen occasionally where technicals have been included with maintenance employees and clericals because of their different training, duties, and wages (Logan, Comment 150, pp. 3–4).

D. Proliferation

Technical units generally encompass a wide range of classifications, including LPNs, and they constitute approximately 17% of the health care work force—a substantial complement of workers (WS McKinney at 2; WS Schoen at 3, 5). What evidence there is shows that strikes involving technical employees alone are rare. In New York City, for example, strikes involving technical employees occur in broader units of clericals, service and maintenance, and professional employees. (Long Island Jewish (LIJ) Medical Center, Comment 270.)

E. Other Issues

The label "technical" may no longer define a particular group of jobs, and indeed, the union witnesses who appeared at the rulemaking hearings often did not distinguish between technicians and technologists (Schoen, 5175; Ahmed, 3709–11; McKinney, 5471–79; WS Briguglio at 2–3.) Technologists often have been included as professional employees in professional-only units. See, e.g., *Children's Hospital of Pittsburgh*, 222 NLRB 588 (1976); *Mercy Hospitals of Sacramento*, 217 NLRB 765, 769 (1975). Although industry witnesses urge the Board to consider the practical effect of the difficulties of resolving issues of unit placement, and caution that there may be "intense litigation" over unit placement which could be avoided by the inclusion of technicals in a broad non-professional unit (AHA Br. 34), we note that, even with such inclusion, litigation could continue to occur over which technicians were professional employees. Individual placement issues always have been present in the consideration of health care and other cases. In our opinion, their existence should not deter the Board from taking the first step, i.e., determining the threshold appropriateness of a separate technical unit.

F. Conclusion

For the above reasons, we determine that separate technical units are appropriate for collective bargaining. The evidence clearly demonstrates that the varied technical employees employed in the health care industry are appropriately grouped into a single unit by virtue of their education, training, and specialized skills, and do not constitute a unit so large as to be overly diversified and hence unwieldy for organizing and collective bargaining.

IX. Skilled Maintenance

A. Introduction

In the Notice of Proposed Rulemaking, the Board tentatively determined that service and maintenance employees constituted a separate appropriate unit and that skilled maintenance employees should be included in that unit rather than represented in separate skilled maintenance units. Among the reasons we expressed for including skilled maintenance employees in the broader service and maintenance units were:

(a) That their skill levels do not, at times, greatly exceed those of other service and maintenance unit employees;

(b) That they work throughout hospital's facilities, and thus frequently come into contact with other service and maintenance employees;

(c) Their inclusion in broader units will help to prevent unit proliferation; and

(d) As a practical matter, the Board's approval of separate maintenance units had fared poorly in the courts.

After carefully considering the evidence amassed during the rulemaking hearings, we have determined that, contrary to our earlier impressions, skilled maintenance employees can and should constitute a separate appropriate bargaining unit.

B. Relationship to Other Employees

1. *Functions and skill level.* Evidence from the rulemaking hearings shows that skilled maintenance employees perform functions apart from those of unskilled service, maintenance, and clerical employees in that these employees deal with highly complex and sophisticated systems and equipment (Carrick, 3448–3450; Jacquin, 5354–55; Lake, 146–148). While they occasionally perform routine, unskilled tasks, skilled maintenance employees are generally engaged in the operation, maintenance, and repair of the hospital's physical plant systems, such as heating, ventilation, air conditioning, refrigeration, electrical, plumbing and mechanical (Lake, 150–151; Viat, 3457–59, 3476–77; Hach, 5318; Giblin, 5382–83). Work on these systems requires abstract skills and knowledge at levels considerably higher than those of other non-professional hospital employees (Marshall, 4010–4012; Hammond Exh. 1, pp. 340–45, 580–623; Cornfield, 5698; WS Cornfield at 4–6, citing Dictionary of Occupational Titles of U.S. Employment and Training Administration). Skilled maintenance employees are rated more highly, for example, even than physicians on the manipulation of "things" (WS Cornfield at 5). Skilled maintenance employees are frequently required to have postsecondary training in their field, such as vocational or trade school. Even the lower skilled maintenance employees in plant operations and maintenance are required to have higher skills than those required of service employees. (Jacquin, 5363–64, 5374, 5377; Viat, 3459–60; Giblin, 5384.)

2. *Education, licensing, and training.* Contrary to virtually all nonsupervisory service classifications, which require only a grade school education, skilled maintenance classifications require completion of high school; at least some trade or vocational school experience, if not graduation therefrom; completion of formal or informal apprenticeship programs, which may take several years; or an associate's or bachelor's degree (Hammond, 5404–05, 5409–12; AHA Health Care Occupations: A Comprehensive Job Description Manual pp. 340–45, 385–88, 394–402, 499–501, 561–62, 567–70, 573–74, 580–623; Marshall, 4010). Skilled maintenance employees also need continuing education to keep abreast of technological changes in building maintenance, such as computers and remote controls (Carrick, 3454; Marshall, 4011–12; Schloop, Chi II 165; Schwemm, Chi II 186–89; Hammond, 5408; WS

Schwemm, Exh. 5–9; WS Fowler at 4; WS Denevi at 7–9). Moreover, the amount of training available in skilled maintenance classifications compares favorably to that offered in various technical classifications, such as lab technician and medical records technician (WS McKinney at 6–7), and access to the programs and the upward mobility they bring provide a common concern to employees largely unshared by those outside the skilled maintenance group (Schloop, Chi II 165; Ryan, 4739). Another distinction between skilled maintenance and unskilled service employees is that at least seven skilled maintenance classifications, but no service classifications, require licenses. (Hammond, 5404–06; WS Cornfeld, at 6–8)

3. *Supervision.* The distinct nature of skilled maintenance functions is underscored by the frequent placement of skilled maintenance employees in separate departments, usually coinciding with the hospitals' plant engineering or maintenance departments (Carrick, 3448; Viat, 3457, 3478; Marshall, 4014; Hach, 5342, 5354). Thus, skilled maintenance employees frequently have their own supervision (Hammond, Exh. 1, pp. 581–590). Moreover, skilled maintenance employees are not supervised by any supervisors from outside their own departments (see, e.g., WS Fowler at 8).

4. *Wages, hours, working conditions.* While it appears that certain terms and conditions of employment, i.e., fringe benefits and personnel policies, are similar among non-professional employees (Jacquin, 5368–70; Comer, Chi II 326–29; Comment 129, Hall), wage rates paid to skilled maintenance employees underscore their higher skills and training. Thus, the most recent Industry Wage Survey: Hospitals, Aug. 1985, BLS of the DOL, shows that skilled maintenance employees in private hospitals in 23 metropolitan areas averaged $11.89/hour whereas, in comparison, employees in six service classifications averaged $6.84/hour, office clericals in five classifications averaged $7.56/hour, and employees in ten technical classifications averaged $9.89/hour. (Lake, 154–55; IUOE, Exh. 4.) Thus, on the average, skilled maintenance employees earn 25% more than technicians, almost 60% more than business office clericals, and 76% more than service employees. Moreover, the wage rate of lesser skilled maintenance employees, while lower than that of the most skilled maintenance employees, almost always exceeds that of even the highest-paid service employees and often exceeds the rate of employees in other classifications as well.

5. *Interaction with other employees.* Though they primarily work in maintenance areas, skilled maintenance employees do perform work throughout the hospitals (Kelly, Chi II 178; Carrick, 3453; Hach, 5330). As a result, skilled maintenance employees have contact with just about every other employee in a hospital. However, these contacts are brief, limited, and incidental as it appears that the only employees with whom skilled maintenance employees actually work are others from the maintenance department (Carrick, 3453–54; Jacquin, 5360; Kelly, Chi II 212–13), and that the contacts with non-maintenance employees typically consist of other employees' identifying the maintenance problem to the skilled maintenance employees (Kelly, Chi II 178, 213; Jacquin, 5360; WS Fowler at 8).

6. *Labor market and career paths.* Skilled maintenance employees have separate labor markets and highly mobile cross-industrial career paths as the operation and maintenance of physical plant systems are the same no matter in which industry they are performed (Marshall, 4014; Schloop, Chi II 163; Kelly, Chi II 177; Fox, 3436–37; O'Cleireacain, 5427; WS Denevi at 4). Easy mobility in skilled maintenance classifications tends to orient these employees toward their skills rather than the industry in which they are employed (Lake, 144, 490; Marshall, 4010, 4019). The external skilled maintenance labor market also affects the hiring and wage scales in the health care industry since hospitals compete with other industries, such as hotels and office buildings, for these employees (Berliner, 5645; Hach, 5344–45; WS Schoen at 23; Corbett, 3344–45).

Skilled maintenance employees are in a separate internal labor market within the hospital in terms of career path, training, and promotion. There are formal and on-the-job training programs to permit lower level maintenance employees who have acquired skills and knowledge to move into more highly skilled positions; yet, there is virtually no transfer of clerical or service employees into maintenance classifications. (Schloop, Chi II 204–05; Kelly, Chi II 216–17; Giblin, 5400; O'Cleireacain, 5427, 5468; WS Shea at 18.) Even entry level jobs are filled by those with skilled maintenance backgrounds (Hach, 5327; Schloop, Chi II 203–04).

C. History of Representation

The appropriateness of separate skilled maintenance units is supported by a history of separate representation, especially by labor organizations specializing in the separate representation of skilled maintenance employees (IUOE Exh. 2 revised; Holland, Chi II 305–09; Friedman, 5036, 5040–41; Peters, Chi II 131–34; Comer, Chi II 320, 327–28; Hach, 5328; Giblin, 5395). For example, the IUOE currently represents at least 237 separate skilled maintenance units in both private and public health care institutions nationwide (IUOE Br. 56). Twenty percent of IUOE health care units date from the 1940's and '50's, and 85% of them predate the 1974 amendments (IUOE Exh. 2 revised). Admittedly, there are skilled maintenance employees represented in combined service and maintenance units, or in a handful of broader non-professional units, but inclusion of skilled maintenance employees with these other employees does not necessarily show a voluntary grouping as some combined units are the result of stipulations so that elections could be held without further delay, or are atypical situations (Stickler, Chi I 16–26; Twomey, 131–34; Emanuel, 3497; Ratner, 3728; AHA Exh. 4–9; Willman, 4491–92; Muehlenkamp, 4767; Friedman, 5041; King, 4244, 4249, 4251–52). In addition, the evidence regarding combined units is equivocal in that the "maintenance" employees in "service and maintenance" units are frequently unskilled rather than skilled maintenance employees (Silberman, 5651; IUOE Br. 58; Shea, 5227–28; Splain, 5302–04).

D. Organizing and Bargaining Interests

1. *Organizing.* Though clearly not impossible, it appears that because of the variety of personal interests involved it is more difficult to organize larger, combined units than to organize separate smaller units of employees (Viat, 3465; Sackman, 3578; Schwarz, 265; WS Schwarz, Koziara study pp. 1, 4, Figure 1; Delaney, 4517–18, 4525; Silberman, 5686; AFL Exh. 2). Larger heterogeneous units deter decertifications of unions as well (Delaney, 4523). In addition, skilled maintenance employees usually do not wish to organize with other groups, and it is unusual for different groups of non-professional employees to seek to organize in the same unit (Muehlenkamp, 4785; Olson, 4698–99; Ratner, 3730). There is evidence that, where combined units are sought, separate interests of the diverse groups may make it difficult, or impossible, to hold organizing meetings of the entire group (Viat, 3465).

2. *Bargaining interests.* While all employees have some similar bargaining

concerns, i.e., wages, hours, and fringe benefits, skilled maintenance employees have additional interests different from those of other non-professional employees. They seek wage levels commensurate with those of skilled maintenance employees in other industries; access to craft-related education and training programs; tool supply allowances; safety equipment and practices; portable pensions, because of their cross-industrial mobility; and input with respect to subcontracting of work. (Kelly, Chi II 175; Marshall, 4011; Willman, 4492–93; Schloop, Chi II 164–65; Schwemm, Chi II 209; Viat, 3466–67; Giblin, 5388.) Service employees and business office clericals have specialized bargaining interests as well (Schloop, Chi II 168; Viat, 3466–67; Gregory, 5746). These differences lead to difficulties in bargaining in a heterogeneous group, and may result in the smaller group of skilled maintenance employees getting lost in the shuffle in negotiations relating to the more numerous lesser skilled employees (Schloop, Chi II 168–69; Olson, 4729–30; Viat, 3465; Willman, 4492; Ratner, 3734; Shea, 5187; Muehlenkamp, 4795–96). Negotiating in a broader unit may also serve to broaden the scope of labor disputes by involving employees whose personal interests are not of concern in disputes relating to the interests of other unit employees (Viat, 3466). For example, in one hospital in which two unions jointly represented a combined unit of service, skilled maintenance, technical, and plant clerical employees, the skilled maintenance employees were forced to join other employees in a strike over unresolved bargaining issues that affected only the other employees even though all issues involving the skilled maintenance employees had already been settled (Viat, 3466).

E. Proliferation

Contrary to our concern, as expressed in our NPR, there was no evidence adduced at the rulemaking hearings that establishing a separate unit of skilled maintenance employees will lead to proliferation of bargaining units in the industry (Kelly, Chi II 180; Gilmore, 4894; Splain, 5252). No labor organizations have sought or demonstrated the appropriateness of other small units (IUOE Br. 64–65). Moreover, the skilled maintenance employee unit may be viewed as a consolidation of specialized employees inasmuch as it combines such employees as carpenters, painters, plumbers, and electricians (IUOE Br. 65). The only employee classification performing work similar to that performed by traditional craft or trade-type maintenance employees are biomedical technicians (Marshall, 4018–20; Hach, 5346–49; Jacquin, 5377; Viat, 3480–81; Giblin, 5396–98). Biomedical technicians work on and repair sophisticated computer-based equipment, and because of both their skills and training share a community of interest with other skilled maintenance employees and in many instances have already been included in some such units (Fox, Exh. 1 and 2; Hammond, Exh. 12; Viat, 3458, 3460, 3480; Giblin, 5495–97; Marshall, 4019–20; McKinney, 5497, 5525; Hach, 5347–49; Jacquin, 5377; Schloop, Chi II 203–04; Carrick, 3448).

F. Strikes, Sympathy Strikes, Jurisdictional Disputes, and Wage Leapfrogging or Whipsawing

1. *Primary strikes.* The evidence taken at the rulemaking hearings shows that the presence of separate skilled maintenance units has not resulted in a large number of strikes by these units (Lake, 157; IUOE Exh. 2; Viat 3468; Schloop, Chi II 169; Kelly, Chi II 180; Hach, 5323; Giblin, 5389; Hammond Exh. 12, attached affidavits). The hospitals contend that the number of strikes is low because the number of employees involved is small and therefore the cost of a strike exceeds the potential increase in labor costs of the union's demands thereby making it more likely that hospitals will give in to those demands. Nonetheless, the fact remains that in the 237 skilled maintenance units represented by the IUOE, in which hundreds of contracts have been negotiated, there have been only about 25 strikes ever (Lake, 157; IUOE Exh. 2). In addition, the incidence of strikes by skilled maintenance employees has not increased in proportion to the number of other represented units of hospital employees (IUOE Exh. 2; Viat, 3468–69; Fox, 3442). The few strikes that have occurred have been almost exclusively in support of bargaining demands, and have not been disruptive to health care delivery; indeed, skilled maintenance employees have offered to provide skeleton crews to assure uninterrupted service in the event of a work stoppage (Henry, 3059; Fox, 3442; Viat, 3467–68, 3470; Hammond Exh. 12, affidavits of Bess, Tighe, and Scheb.) Moreover, other hospital employees, whether represented or not, generally have not engaged in work stoppages in support of striking skilled maintenance employees (Hammond Exh. 12, affidavits of Bess, Tighe, and Scheb).

2. *Sympathy strikes.* While the strike rate in the health care industry in general is low (Subrin, Chi I 119–20; Schoen, 5181; Silberman, 5659), there is evidence that hospitals have not availed themselves of the opportunity to limit the possibility of successive multiple strikes by supporting union proposals for common contract expiration dates of different units' contracts; indeed, hospitals have opposed such proposals. (Henry, 3075; Absalom, 3318–19; Corbett, 3359–60; Schmidt, 3625; Weinrich, 4274; Muehlenkamp, 4771, 4774). Moreover, there have been virtually no sympathy strikes by skilled maintenance employees in support of other striking hospital employees (Schloop, Chi II 169; Kelly, Chi II 180; Fox, 3442; Friedman, 5060; Hach, 5323; Jacquin, 5361; Giblin, 5389; WS Fowler at 7; Hammond Exh. 12, affidavits of Bess, Tighe, and Chambers). No-strike clauses, which are generally honored, appear to have contributed to the infrequency of such strikes (Fox, 3442; Friedman, 5060–61). And, while the evidence shows that bargaining in broad, heterogeneous groups may serve to expand the scope of a strike by involving employees whose personal interests are not of concern in disputes relating to the interests of other unit employees (Viat, 3466; see above discussion in subsection (d)(2), Bargaining Interests), it also shows that the absence of sympathy strikes in the industry makes it unlikely that such expansions of strikes will occur where employees with separate and distinct interests are represented in separate units.

3. *Jurisdictional disputes.* In general, industry witnesses were unable to support the allegation that allowing separate skilled maintenance units would increase the number of jurisdictional disputes in the industry (Graumann, 409; Weinrich, 4254, 4281; Cammarata, 4406). Instead, the evidence shows that jurisdictional disputes over work assignments involving skilled maintenance employees are, like those in the hospital industry in general, rare and nondisruptive (Roth, 3153; Muehlenkamp, 4775; WS Shea at 14). Moreover, we are persuaded that the types of jurisdictional disputes which do arise, i.e., disputes over job classification, content, and responsibility, occur regardless of whether the employees are represented in one unit or several different units (Krasovec, 420–22; Hach, 5324; Giblin, 5389–90; WS Shea at 14). Finally, the few disputes which have arisen have been resolved informally, minimizing disruption of normal operations (Schloop, Chi II 170–71; Kelly, Chi II 181, 206, 207; Fox, 3442–43 & Exh. 2; Viat, 3471; Hach, 5323; Jacquin, 5361; Giblin, 5389).

4. *Wage whipsawing and leapfrogging.* Wage whipsawing or leapfrogging virtually never occurs with

skilled maintenance units inasmuch as the wages of skilled maintenance employees are generally based on the wages of skilled maintenance employees in other industries, rather than on the wages of other health care industry employees (Corbett, 3344; Hach, 5344–45).

G. Changes in the Industry

The alleged trend toward specialized hospitals and integration of employee functions would appear to have no impact on skilled maintenance units because the physical plant systems will essentially remain the same and will require skilled maintenance employees to operate and maintain them (Viat, 3470). Any move toward interdisciplinary teams also appears to have had no effect on skilled maintenance employees as virtually every team that was described by the industry included only health care personnel (Mixon, Chi II 275; Gallagher, 3541–42; Houston, 4025, 4050–55; Donnelly, 4064, 4080; Sokatch, 4195; Weinrich, 4268–69; Comment 62, Achterhof; Comment 78, Olman Greater Cincinnati Hospital Council). The one example provided at the hearings of skilled maintenance employees' participating on a team involved the skilled maintenance employees' voluntarily critiquing vocational training projects of rehabilitation patients (Coney, 165). This one example of an incidental function undertaken by a maintenance group at one hospital is, so far as we know, unique, but in any event does not involve direct patient care and is clearly insufficient to obliterate their distinct functions. Finally, the industry gave no examples of skilled maintenance employees being cross-trained into other job groups such as clericals or service employees and, cross-training from service to skilled maintenance positions or technical positions is virtually unknown. (Stickler, Chi I 9, 33–37; Houston, 4026; O'Cleireacain, 5467–68; McKinney, 5481.)

H. Other Issues

1. *Costs of multiple units with reference to skilled maintenance.* Assuming the relevance of the potential cost to the industry of negotiating in additional units, the evidence does not support the conclusion that units of skilled maintenance employees would necessarily have any adverse effect on hospitals' expenses. The evidence there is shows that contract negotiations for skilled maintenance units tend to be relatively short, which means relatively inexpensive (Comer, Chi II 328; Viat, 3469; Jacquin, 5378).

2. *Congressional admonition against proliferation.* The admonition against proliferation of units was directed toward problems that could be caused by having many separate bargaining units, i.e., substantial numbers of strikes interfering with the delivery of health care services, wage whipsawing, and jurisdictional disputes. As shown above, there is little or no evidence that the existence of separate skilled maintenance units has resulted, or would in the future result, in these problems. As a practical matter, permitting separate skilled maintenance units would not necessarily result in the creation of still additional bargaining units since most hospitals have substantially fewer organized units than the number proposed by either the Board or the unions. (Schwarz, 264, WS Table 1; Robfogel, Chi II 223; Comer, Chi II 329; Cammarata, 4425; Delaney, 4520; Muehlenkamp, 4770–71; Shea, 5163.)

During the 1973 legislative hearings on S. 794, the fear expressed by a number of witnesses was that Board precedent might permit a separate unit for each trade or craft found in hospitals. Thus, e.g., Sidney Lewine, testifying on behalf of AHA, and Richard V. Whelan, Jr., representing the Ohio Hospital Association, noted with apprehension the proliferation that would result if the Board were to grant a separate unit to each construction craft such as stationary engineers, carpenters, plumbers, electricians, pipefitters, and painters. (Coverage of Nonprofit Hospitals Under National Labor Relations Act, 1973, Hearings on S. 794 and S. 2292, at 128–29, and 465–66, respectively.) The Board's proposal directly takes into account this concern, which was called to Congress' attention, by putting all such separate skilled crafts into *one* skilled maintenance unit.

3. *The most recent Board decision.* In *St. Francis Hospital,* 286 NLRB No. 123 (Nov. 30, 1987) (*St. Francis III*), the Board held that a separate maintenance unit was inappropriate. In so doing, the Board found that the hospital's maintenance employees constituted less than 10% of the hospital's 438 service and maintenance employees, and spent approximately 80–95% of their time working throughout the hospital, thus bringing them in frequent contact with all other hospital employees. The Board further found that the hospital used independent contractors to perform difficult work, and that the sought employees shared the same basic terms and conditions of employment as service employees, including departmental supervision. The Board also noted that its finding that these particular maintenance employees did not constitute a separate appropriate unit was based on the particular facts of the case and was in no way an expression of its view concerning the appropriateness of maintenance units in general. Based on the evidence obtained during the rulemaking hearings, it is unlikely that we would reach the same result. Thus, the evidence from the hearings shows that, in virtually all health care facilities which were the subject of testimony at the hearings, skilled maintenance employees constitute a discrete and distinct group of employees. They perform functions apart from those of unskilled service, maintenance, and clerical employees. Skilled maintenance employees were shown to be highly skilled as evidenced by higher educational, licensing, and training requirements. While they share some common terms and conditions of employment with other hospital personnel, these employees uniformly have higher wages than service and clerical employees and have a number of bargaining interests separate and distinct from those of non-maintenance employees, such as access to craft related education and training programs, tool supply allowances, safety equipment and practices, portable pensions, and the like. Moreover, while skilled maintenance employees do work throughout the entire hospital, their contact with non-maintenance employees is brief and limited. Finally, the hearing evidence shows that transfers are rare in the industry and that skilled maintenance employees have a separate internal and external labor market.

I. Conclusion

For the above reasons, we find that a unit of skilled maintenance employees is separately appropriate for collective bargaining purposes. Although the number of employees in such a unit will be relatively small, their work bears little relationship to that of other hospital employees. It is, essentially, a non-health care occupation involving skills, interests, and job markets largely separate from the hospital itself. For that reason, to require unions to organize and represent skilled maintenance employees as part of a larger group of unskilled employees performing health-related jobs within the hospital is both unrealistic and inefficient. Hence, we have decided that the final rule should provide for separate skilled maintenance units.

The IUOE contends (IUOE Br. 9), and we find, that skilled maintenance units should generally include all employees

involved in the maintenance, repair, and operation of the hospitals' physical plant systems, as well as their trainees, helpers, and assistants. However, evidence from the hearings shows that it may not always be possible to identify in advance those employees properly included in this unit, partly because employees performing essentially the same functions are classified differently in different hospitals. Thus, for example, in Los Angeles and San Francisco all employees represented by the IUOE in skilled maintenance units are classified as stationary engineers regardless of their particular job functions (Viat, 3457–58; Hach, 5318) whereas in Chicago, New York, and New Jersey most health care employers have retained craft titles for their employees. (Schloop, Chi II 203; Schloop affidavit; Hach, 5318; Giblin, 5383.) In addition, many skilled maintenance classifications are subdivided by skill or experience level, e.g., master level, journeyman level, apprentice, and/or helper. Among the employee classifications which should generally be included in such units are carpenter, electrician, mason/bricklayer, painter, pipefitter, plumber, sheetmetal fabricator, automotive mechanic, HVAC [heating, ventilating, and air conditioning] mechanic, maintenance mechanic, chief engineer, operating engineer, fireman/boiler operator, locksmith, welder, and utility man. (Health Care Occupations: A Comprehensive Job Description Manual, Chapter XXXII; Hammond, Exh. 12, affidavits of Bowen, Tighe, Chambers, Scheb, McWade, Scadden, Kelly, Schloop, Gindorf, Fox, Lane, Belfi, and Bess.) As noted above, sometimes relatively unskilled utility workers are included, either if they are involved in the maintenance, repair, and operation of hospitals' physical plant systems (Viat, 3460), or if they are part of a separate maintenance department. This list is not exhaustive; rather, it is illustrative of the types of employee classifications exhibiting the characteristics which the rulemaking record shows are typical of employees included in skilled maintenance units. Because of this variation, in some instances it may be necessary to decide by adjudication the unit placement of individuals in particular job classifications. However, this is also true with respect to technical and business office clerical units, for example. It does not defeat the basic appropriateness of the unit as found in this rulemaking proceeding.

X. Business Office Clericals

A. Introduction

In the Notice of Proposed Rulemaking, the Board tentatively determined that business office clericals should be included in a unit of service and maintenance employees, rather than represented in a separate unit. 52 FR 25147. Among the reasons for including business office clericals in the broader service and maintenance unit were that they:

(a) Often share many terms and conditions of employment with service and maintenance employees;
(b) Have regular and frequent contact with service employees;
(c) Are engaged in recordkeeping as are ward clericals, technicians, nurses, and physicians;
(d) Have not been represented historically by labor organizations specializing in representing business office clericals; and
(e) Their inclusion in the broader unit will help unit proliferation.

After carefully considering the evidence amassed during the hearing, contrary to our tentative determination we have concluded that for the following reasons the business office clericals constitute a separate appropriate bargaining unit.

B. The Record Supports a Finding That Business Office Clericals Constitute a Separate Appropriate Unit

1. *Job duties and functions.* Evidence from the rulemaking hearings shows that although many hospital employees perform some recordkeeping functions, business office clericals perform substantially different functions from those performed by other employees (WS Holtz at 8–9; WS O'Neil at 1 & 5526–29). Business office clericals are primarily responsible for a hospital's financial and billing practices (WS Winn at 6–7), and deal with Medicare, DRGs, varying price schedules, multiplicity of insurance types, and new reimbursement systems (WS Schoen at 9; Berliner, 5599–5600). Increasing computerization of financial management has led to specialization and has reduced the clerical duties of other hospital employees (WS Schoen at 11).

One argument advanced by some employers is that many different professional and non-professional classifications use computers; 2/3 of the hospitals are considering information systems technology which will enable nurses to enter and read programs reporting patients' test results, medication, and scheduling (AHA Br. 45 citing article in *Modern Healthcare*). Unlike these employees, however, business office clericals do not engage in any form of patient care and are not responsible for the patients' physical or environmental health (Wilkinson, 4973–76; Bryant, 116–118). Moreover, although other clerical and professional employees may be utilizing information systems technology and video display terminals (VDTs), and despite the existence at the University of Alabama (Birmingham) of a training program for "clerical technicians" who learn to do billing, perform blood tests, and take x-rays (AHA Br. attachment 5), it has not been shown that service workers or clinical technicians perform functions similar to those performed by the business office clericals, i.e., they are responsible for selecting, completing, or interpreting business forms using computers, keyboard terminals, and typewriters. Nor was it shown that the University of Alabama program was duplicated elsewhere in the country, or that any person from the program was ever placed in a hospital. (AFL Br. 77). Moreover, the evidence indicates that this program was clearly intended for technical employees (Stickler, Chi I 37–38).

2. *Education.* Business office clericals generally are required to have a higher level of education than service and maintenance employees, i.e., a high school diploma and specific clerical skills, and a majority of business office clericals have some college background and formal clerical training (WS Nussbaum at 2; WS Cornfield at 6). Moreover, because of the increased complexity of the hospitals' financial operations, including the introduction of DRGs, hospitals have begun to require more training for business office clericals, and to require skills in such areas as programming, coding, abstracting, and billing procedures (WS Schoen at 9; WS Ryan at 1–2). By contrast, service workers have minimal educational requirements, prior work experience is unnecessary, and they are not required to possess special business-oriented skills (AFL Br. 53; WS Cornfield at 8). There is some evidence that admitting clerks and medical records librarians receive vocational training at many of the same business or trade schools as purchasing clerks and accounts receivable clerks (WS Coney at 5). However, no specific evidence was provided regarding the type of training each receives. The fact that some employees are attending the same schools does not establish that they are receiving identical training. Consequently, we do not place great weight on this factor; in any event, whether some of these other

classifications are also business office clericals is a matter we do not here decide. Further, business office clericals undergo constant retraining to update current skills or acquire new skills as financial operations are updated (WS Holtz at 5, 9–10).

3. *Terms and conditions of employment.* Although clericals often share some terms and conditions of employment with non-professional employees, especially benefits, evidence from the rulemaking proceeding clearly shows other, significant differences between the business office clericals' terms and conditions of employment and those of the service and maintenance employees. Salaries paid to business office clericals reflect their higher skills and training; a 1985 BLS wage survey shows that business clericals on average earn $2,000 more than the top service jobs (WS Schoen at 12; WS O'Neil at 3). Unlike service and maintenance employees, business office clericals may be permitted to smoke and eat at work stations, and have different dress requirements and health and safety concerns. In addition, unlike most service employees who work varying shifts and weekends, business office clericals generally work one shift, 5 days per week. (AFL Br. 59; WS Nussbaum at 5; Bryant, 116–118; Booth, 3686; WS O'Neil at 2.)

4. *Supervision.* The differences in skills and functions are underscored by the separate supervision of business office clerical departments, which has resulted from the almost universal centralization of business office functions (Berliner, 5597; WS Schoen at 9–10 & 5173). The SEIU survey of 250 facilities showed that at 100% of the facilities, business office clericals have separate supervision. Although clericals occasionally may share supervision with other non-professionals (Briguglio, 5300), the evidence establishes that business office clericals regularly have a separate supervisory hierarchy; ultimate supervisory responsibility generally rests with financial administrators as compared to the ultimate supervisory authority for service employees which rests with administrators overseeing patient care (WS O'Neil at 2; WS Holtz at 4, 6–7). Two examples were given in which clericals and other employees report to the same individual (Briguglio, 5300; Comment 157, Halifax Medical Center). Nevertheless, we are persuaded that, with few exceptions, business office clericals are separately supervised. Moreover, in one important respect, the nature of the supervision received by the business office clericals is unlike the traditional supervision received by service and maintenance employees. Technology enables supervisors to monitor closely the output of the business office clericals, measured in keystrokes, paper output, volume of bills processed, time on terminals, and phone calls; this monitoring increasingly is used for purposes of discipline. (WS Holtz at 6–7; WS Nussbaum at 2–3.)

5. *Interaction.* Contrary to our original impression, the evidence shows that business office clericals are physically isolated from other non-professional employees and, therefore, have little contact or interaction with them. (Dretchan, 5002; Bryant, 116–118; Booth, 3689–90; WS Nussbaum at 4). The ballooning costs of new construction, as well as increased technology, have resulted in many instances in hospitals' moving administrative offices outside the health care facility into existing buildings at other locations (Berliner, 5602; WS Schoen at 10). Of 250 hospitals surveyed, 35% of the business offices are located in a separate building, 25% are located in a separate wing of the hospital, and 28% are located on a separate floor (WS Shea at 17; WS McKenna at 3–4). Further, centralized processing of information and the increasing use of computerized communication of data continue to reduce even further the potential for physical interaction (WS Schoen at 14).

6. *Career paths and job mobility.* Business office clericals have few avenues of advancement within health care facilities; rather, they have a separate and increasingly well-defined external labor market (Wilkinson, 4980; WS Ryan & 4749–50). Business office clericals are hired almost exclusively from the external labor market, and hospitals hire business office temporaries as replacements rather than using other hospital personnel. The external market also influences salary scales since hospitals compete with other industries for these employees. (WS Schoen at 11–12; hospitals use BLS wage surveys in determining salaries for business office clericals.) Consequently, while service employees generally remain in health care facilities (WS Berliner at 9–10), business office clericals look elsewhere for other positions if they are dissatisfied.

There is minimal interchange, either permanent or temporary, between employees in service, maintenance, technical or professional jobs and those in business office clerical positions (Ryan at 1–2). Moreover, although one witness testified generally that some clericals receive training to provide direct patient care (Stickler, 16–17 & WS Rhodes at 7), there were no examples of instances where this had actually occurred. There would appear to be little cross-over from clerical positions to patient care positions. Further, the evidence reveals that job mobility between service employees and business office clericals is basically nonexistent and, with the upgrading of skills and additional training received by business office clericals, it is becoming even less feasible (WS Lewis at 2–3; WS Blake at 2; WS O'Neil at 2; WS Berliner at 7). In some hospitals, admitting clerks and medical records librarians, and purchasing clerks and accounts payable clerks are interchangeable and may substitute for each other, and technicals and professionals may handle clerical operations on the night shift (WS Coney at 5; Comment 263, Huntsville Memorial Hospital). Nevertheless, for the most part, even clinical clerical workers cannot shift into business office clerical positions without a substantial degree of retraining and reskilling (WS Berliner at 7). There was testimony that hospitals prohibit or discourage bidding between the business office clerical and service and maintenance positions; however, even where hospital-wide posting of vacancies is required and employees use their seniority to bid, there is little cross-over between service and maintenance employees and business office clericals (WS Shea at 18; WS Roitman at 1.)

7. *History of representation.* The appropriateness of separate business office clerical units is supported by a history of representation separate from service and maintenance employees. For example, at 250 hospitals surveyed by SEIU, business office clericals sought representation in 71 hospitals, of which 46 were separately organized, compared with service employees who organized in 195; a survey conducted by NUHHCE of 200 post-1974 elections in 100-plus bed hospitals showed 37 involved business office clericals, of which 33 were separate units (WS Shea at 15–16; Muehlenkamp, 4767–70). There are 92 separate business office clerical units represented by AFL affiliates in private sector hospitals. (AFL Br. App. A). Local 1199 had no combined non-professional units until *St. Francis II* (Friedman, 5035–41). Although there are business office clericals represented in combined service and maintenance units (Stickler, Chi I 23–31 giving examples), some combined units may have resulted from an effort to minimize delay or to comply with *St. Francis II* (AFL Br. 70). The weight of the evidence establishes that business office clericals predominantly have been separately represented.

8. *Bargaining interests.* While all employees have some similar bargaining concerns, i.e., wages, hours, and fringe benefits, business office clericals have a number of different interests, e.g., pay equity, performance monitoring, productivity standards, career mobility, automation, and VDT stress, as opposed to concerns of service employees such as job security, subcontracting, economic survival, supplies, shift rotations, infectious disease, injuries, and patient care (WS Nussbaum at 3; WS Lewis at 2; WS Holtz at 12–13; WS Barton at 1; AFL Br. 64–65).

Despite the differences, in some instances business office clericals have bargained jointly with other non-professional employees and contracts have covered both non-professional employees and business office clericals. In 1987, Mercy Hospital negotiated a contract which included over 50 classifications in one overall non-professional unit (AHA Br. attach. 15) (One classification included such jobs as accounting clerk and lab department secretary and both received identical wage rates and wage increases for the duration of the contract). See also Comment 162, AMI; Saporta, 5142; Comment 154, Michael Reese Hospital, for other examples. However, in some cases where business office clericals negotiated together with service employees and the resulting contract provided for identical terms and conditions of employment, wages and upgrade negotiations often remained separate, and clericals had different bargaining representatives. In one instance incentive bonuses tied to receivables were offered only to business office clericals, and in others the contracts contained separate wage schedules for business office clericals. (WS Holtz at 10; WS McKenna at 3–4.) At Roosevelt Hospital, although the union bargained jointly for clericals, technicians, and service and maintenance employees, the clericals had their own bargaining delegates, contracts for business office clericals and service and maintenance employees were administered separately, and there was no interchange of delegates or exchange of grievance handling (Colbert, 5020–22).

9. *Proliferation.* Contrary to our concern, as expressed in the NPR, there was no evidence adduced at the rulemaking hearings indicating that a separate unit of business office clericals will lead to the proliferation of bargaining units in the industry. The admonition against proliferation of units was directed toward problems that might be caused by having many separate bargaining units, i.e., substantial numbers of strikes interfering with the delivery of health care services, wage whipsawing, and jurisdictional disputes. There is no evidence that the existence of a separate unit of business office clericals would result in such problems. There were no examples of sympathy strikes by business office clericals in support of service and maintenance employees, and no examples of leapfrogging because of a separate business office clerical unit. (WS Wynn at 3.) In one hospital as to which there was testimony about separate units, there was no evidence of jurisdictional disputes. (WS Gray at 4; Michael Reese Hospital). One argument advanced was that because a business office clerical unit will not include all clerical classifications, e.g., ward clerks, there is a potential for conflicts between clerical groups. There was no evidence of specific examples, and we accord no weight to the theoretical possibility of a conflict.

10. *Legal Precedent.* Legal precedent supports finding separate business office clerical units appropriate. The Board has recognized the appropriateness of separate business office clerical units in every other industry covered by the Act, and until *St. Francis II,* in the health care industry. See e.g., *Armour & Co.,* 15 NLRB 268 (1939); *Legal Services for the Elderly Poor,* 236 NLRB 485 (1978); and cases cited in AFL Br. pp 71–72. From 1974–1984, the Board did not find any business office clerical unit to be inappropriate (See NLRB Exh. 5, revised). Moreover, Senator Taft's industry-sponsored bill would have explicitly provided for separate office clerical units.

In *Baker Hospital,* 279 NLRB No. 38 (Apr. 16, 1986), the Board required the inclusion of business office clericals in a unit of service and maintenance employees. In so doing, the Board found that business office clericals and service and maintenance employees received the same fringe benefits and were covered by the same personnel, salary, promotion, seniority, transfer, and disciplinary policies. The Board also found that there was a significant amount of contact between clericals and unit employees. The Board held, therefore, that there was an insufficient disparity of interests between business office clericals and service and maintenance employees to justify excluding the clericals from the unit. After considering the substantial empirical evidence adduced in the rulemaking proceeding, we find it unlikely that we would reach the same result. The evidence from the hearings shows that business office clericals constitute a distinct group of employees. They perform substantially different functions, have a greater degree of education and training, utilize different skills, are separately supervised, receive higher wages, have a number of distinct bargaining interests, have little or no interaction or interchange with other employees, and frequently are located in geographically separate offices.

11. *Identification of business office clericals.* The evidence from the hearings indicates that there may be other clericals, e.g., ward clericals, medical records clericals, physicians' secretaries, and admitting office clericals who perform functions similar to those performed both by service employees and business office clericals or else perform a combination of functions such that they cannot be readily classified as one or the other. To date, however, the Board has decided the placement of these categories of employees on a case-by-case basis, generally excluding these classifications of employees from business office clerical units. See *Mercy Hospital of Sacramento,* 217 NLRB 765 (1975). There, the Board found a separate unit of business office clericals appropriate, and placed ward clericals in another unit because their work was more closely related to the function performed by personnel in the service and maintenance unit. The precise placement of particular classifications which may be disputed in a particular case is, for the time being, left to the case-by-case adjudicative approach.

C. Conclusion

Business office clericals share some terms and conditions of employment with all other service and maintenance employees, have occasionally participated in joint bargaining, and may even have been covered by the same contracts. However, we are more persuaded by the evidence developed at the hearing as to their separate supervision, their different and specialized skills and education, their minimal interchange and contact, their different career paths and job markets, their maintenance of a separate identity even where bargaining was in a larger group, and, finally, the recent development whereby more and more business office clericals are being moved out of the hospital to different buildings or facilities. We believe that the weight of the evidence strongly supports finding separate business office clerical units appropriate.

XI. Other Non-Professionals

Based on our analysis of the evidence adduced, we have found appropriate separate units of technicals, business office clericals, and skilled maintenance employees. All remaining service and non-professional employees [24] shall, therefore, constitute a separate appropriate unit, where requested.

XII. One Hundred Bed Distinction

The proposed rule suggested establishing a different unit configuration for hospitals over 100 beds than for those of 100 beds or fewer based on the Board's belief that hospital size (as determined by the number of beds) was correlated with integration of labor, and that smaller hospitals were more functionally integrated than larger hospitals, and could function with fewer, broader units. However, the record does not support that belief, and the Board has concluded that its rule regarding units in acute care hospitals should apply regardless of hospital size.

The vast majority of representatives of both unions and employers appeared to agree that hospital size is not well correlated with integration or division of labor, and opposed a rule differentiating between large and small hospitals. Examples of unions opposing the distinction were: AFL Br. 139–140; ANA 4919–20; SEIU, 5215; Hospital Professionals and Allied Employees of New Jersey, 125. Over 40 employers registered specific or general criticism of use of a 100 bed distinction, including AHA, Br. 48; League of Voluntary Hospitals, 226–229, 254; Hospital Council of Western Pennsylvania, 4395; Comment 5, Holy Redeemer Health Systems; Comment 15, Methodist Health Systems; Comment 25, Bradley Memorial Hospital; Comment 78, Greater Cincinnati Hospital Council; Comment 82, Humana, Inc.; Comment 104, St. Francis Hospital. Experts in the field agreed with the parties' position (Rosen, 4663; McKinney, 5519–20). Only a handful of commentators supported the use of any distinction based on the number of beds. For example, Comment 11, National Rehabilitation Hospital; Comment 105, Mass. Hosp. Assn.

A survey by UFCW comparing the number of beds and the staffing in hospitals of varying sizes in five states showed a wide variation in staff size (UFCW Exh. 6–11). For example, in New York State, among 46 hospitals surveyed with 20–100 beds, one hospital with 20 beds had over 200 employees, one with 21 beds had 50 employees, one with 20 beds had 209 employees, while another with 129 beds had 181 employees. (UFCW Exh. 11). In California, one hospital with 107 beds had 1011 employees, while another with 110 beds had 299 (UFCW Exh. 6). In Illinois, hospitals with 77 and 91 beds had 279 and 429 employees, respectively, while another hospital with 129 beds had 126 employees (UFCW Exhs. 5, 6). Similar variations, and lack of correlation, appeared throughout the exhibits.

Lack of correlation between number of beds and number of employees may be attributable to specialization or the amount of outpatient services (UFCW Exh. 1–11; WS Willman & 4500; Rosen, 4663; AFL Exh. 20). Thus, it appears that staffing size and patterns might correlate more closely with the nature of services than with bed number (AHA Br. 47; New Jersey Society for Health Care Human Resources Administrators, 439).

The AHA correctly noted that the Board's proposal for a 100 bed distinction did not clarify how it defined the term "bed" (AHA Br. 47). The record shows that there are several meanings of the term in health care facilities. A bed may be licensed or unlicensed; if licensed a bed may be occupied or unoccupied (AHA Br. 47; Comment 52, Hillcrest Baptist Medical Center). Hospitals may change the number of licensed beds more than once a year (California Association of Hospitals and Health Systems, 3229). Occupancy rates vary; a hospital may have occupancy substantially below the number of its licensed beds (Comment 1, Lancaster Fairfield Hospital; Comment 115, National Healthcare, Inc.: rural areas may have only 25–30% patient census). The number of staffed beds (based on average projected occupied beds and patient acuity) can differ from the number of occupied beds (Comment 186, Hiawatha Community Hospital; Comment 191, Trinity Lutheran Hospital.) Beds may also include swing beds (beds that swing between acute care and nursing or long-term care) (Missouri Hosp. Assn., Chi II 265).

The Board also notes that to the extent unions and employers addressed the standard to be used if the Board determined to have a bed-number distinction, they rejected the use of 100 beds as an appropriate bed measure but did not reach a consensus as to the appropriate number of beds to use. For example, some unions suggested using the definition of small hospitals employed by the U.S. Department of Health and Human Services in calculating reimbursements under Medicare, which is those hospitals with fewer than 50 licensed beds. (AFL Br. 141; WS Sweeney.) The AHA suggested a 400 bed cutoff (AHA Br. 141), but other employers suggested 250 beds (Comment 169, Columbus Hospital); 300 beds (Comment 126, Arlington Memorial Hospital); 450–500 beds (Comment 1, Lancaster Fairfield Hospital); and 500 beds (Comment 11, National Rehabilitation Hospital).

The Board's decision to drop the 100 bed distinction is based on the evidence provided by the parties regarding the lack of correlation between bed number and hospital staff, the multiplicity of definitions for the term "bed" in health care, the lack of consensus on the number of beds dividing large and small hospitals, and the parties' general opposition to use of a distinction based on the number of beds.[25]

XIII. Nursing Homes

The only health care facility, other than hospitals, covered by our proposed rule was nursing homes. In so doing, we tentatively determined that the appropriate bargaining units for this type of health care facility should be the same as that for small hospitals, i.e., (1) all professionals, (2) all technicals, (3) all service, maintenance, and clericals, and (4) all guards. After careful consideration of all the evidence presented at the hearings, however, we have concluded that the rule should not apply to nursing homes.

To a larger extent than acute care hospitals, nursing homes vary both in size and type of service rendered. Generally speaking, there are three basic types of nursing home facilities: skilled nursing, intermediate care, and residential care. Skilled nursing homes provide 24-hour inpatient nursing care to chronically ill or stable convalescent patients, are state licensed, and are eligible for both Medicare and Medicaid. Intermediate care facilities also provide 24-hour inpatient care, but care is less intensive and more oriented to daily living. These homes are also state licensed or certified but are eligible only for Medicaid. Residential care facilities meet only social needs, not medical, and are not licensed. (Durham, 3164–66, 69, 71, 83; Comment 155, Indiana Healthcare Assn. (IHA).) The facilities range in size from 10–500 patients (Harris, 4294; Comment 284, Ryan). One-third have a capacity for fewer than 50 residents,

[24] Excepting guards, of course, who must be placed in a separate bargaining unit. See section 9(b)(3) of the Act.

[25] We note, parenthetically, that the information we have acquired as to the relationship between staffing and number of beds most likely would not have been acquired in an adjudicatory proceeding, and provides further evidence of the value of rulemaking in obtaining industry-wide information unavailable in a case-by-case approach.

one third for 50–99, and one-third for over 100 (Harris, 4304).

Unlike hospitals, nursing homes are populated primarily by the elderly and provide long term care rather than medical treatment of a specific illness. Consequently, nursing home staff are concerned not only with their residents' physical well-being but also their social and psychological needs. Accordingly, there is less diversity in nursing homes among professional, technical and service employees, and the staff is more functionally integrated. (Harris, 4294–95; Willman, 4501–02.) Generally, nurses provide a less intensive, lower level of care to patients in skilled and extended care facilities, and thus receive lower salaries than that paid in acute care hospitals (AHA Br. 6–7 citing *Modern Healthcare,* Jan. 3, 1986). In addition, RNs in most nursing homes never administer oxygen or assist in surgery, and therefore generally have no interest in or need for acute care pay differentials or for specialization (Comment 155, IHA; Shepard, 4962). Also, there is for the most part little difference in the duties of LPNs and nurses' aides (Comment 155, IHA). Both are primarily responsible for providing nursing care to patients (Comment 155, IHA, affidavits of Miller and Price; AHA Br. 6 citing *Modern Healthcare,* Jan. 3, 1986). Indeed, almost no aspect of nursing home care is in the exclusive domain of any one group of employees (Harris, 4295). Thus, there appears to be a greater overlap of functions as well as greater work contact between the various nursing home non-professionals (Willman, 4501–02; Comment 155, IHA, affidavits of Townsend and Turner-Simpson).

Skilled care homes also differ from hospitals in that a ratio of 50 patients per nurses' station is ideal for nursing homes, whereas the typical ratio for acute care units is half that number (AHA Br. 7 citing *Modern Healthcare,* Jan. 3, 1986).

Also unlike hospitals, there are few professionals employed at nursing homes, and of those, most are RNs who serve as head nurses or charge nurses primarily performing administrative duties (Durham, 3190; Willman, 4501–02; Saporta, 5145–46; Bullough, 4656–57; Comment 155, IHA, affidavits of Davy, Townsend, Turner-Simpson, and Higdon). There are also few business office clericals. In a typical 100 bed nursing home, the business office will have one or two employees. In a 100 bed acute care hospital, the office consists of payroll employees, accounts receivable and payable employees, data processing employees, and others. (Comment 155, IHA.)

Greater differences in the size and purpose of nursing homes have resulted in greater differences in their organization, regulation, and staffing patterns. For example, in very large homes, business office clericals may be physically separated from the home, and have little employee or patient contact. In very small homes, the business office is located next to the patient care areas and there is continuous contact with the patient care staff. (Comment 155, IHA; Durham, 3166–67). Duties of staff also vary with the size of the institution. In a small, 10-resident facility, the staff will have overlapping responsibilities, and thus an overall unit would be appropriate. In a large, skilled care facility with specialized units (see *infra*), more than one unit might be appropriate (Harris, 4298). In an intermediate care facility which also cares for the mentally disabled as a result of trauma, there may be a separate group of employees, such as psychiatrists, who have distinct supervision and little contact with other professionals (Durham, 3170).

Although most homes are regulated by the state, regulations with respect to staffing patterns and employee qualifications vary widely from state to state (Harris, 4296–97; Comment 284, Ryan). For example, Connecticut requires more skilled nursing care than Iowa, and in some states, skilled nursing facilities must have 24-hour RN coverage. Seventeen states have mandated nurses aide training programs ranging from 20 hours to over 100 hours. A majority of states have no specific training requirements. In Massachusetts, the activity director and the social service director must have baccalaureate degrees; in other states, their formal qualifications are less than those of a nurses' aide. (Harris, 4297; Comment 284, Ryan; Comment 155, IHA.) Also in Massachusetts, as in other states, homes must be staffed by LPNs or RNs, and they are required to provide substantial direct patient care. In contrast, in Indiana, with lesser staffing requirements, nurses' aides provide direct patient care, and LPNs perform RN-type duties such as distributing medication and assisting doctors. (Comment 155, IHA.)

The nursing home industry is also in a period of rapid transition. It is currently undergoing enormous growth as the population of older persons increases and family responsibility for older parents lessens. In addition, many long term facilities will increasingly offer nontraditional specialized services, i.e., head and spinal cord injury units, intensive rehabilitation, sub acute care, Alzheimers, respiratory therapy, hospice care, nutrition, AIDS, home health care, and care for ventilator dependent patients. (Harris, 4299; Comment 284, Ryan; Durham, 3161; AHA Br. 6 citing *Modern Healthcare,* Jan. 3, 1986.) These services require different staffing needs. For example, in most Alzheimers' units, nurses' aides receive psychological training in order to respond properly to their patients' behavior, and LPNs are required to perform recreational, educational, and social activities that are normally done by service employees such as recreational aides. A head injury unit requires many more professionals than are usually present in a nursing home facility. An AIDS facility might need more counselors. (Harris, 4300–4301; Comment 284, Ryan.) The professional and technical staff in a specialized service area such as a coma unit may also be far more integrated than RNs and LPNs who work in the nursing area (Comment 306, Harris).

For some or all of the reasons discussed above, numerous witnesses were opposed to applying the rule to nursing homes (Durham, 3179; Harris, 4293–94; Comment 284, Ryan; Comment 155, IHA; Comment 155, IHA, affidavit of Miller; Comment 3, Jefferson Davis Nursing Home). Three witnesses would support a two unit approach (Comment 22, Louisiana Nursing Home Assn; Comment 27, Jefferson Manor Nursing Home; Comment 34, Lewisburg United Methodist Homes). Several commentators thought the Board lacked sufficient experience with respect to nursing homes to formulate a rule as to such facilities (IUOE Br. 2, fn 1; Durham, 3179; Harris, 4304). Board statistics show that only 20% of the elections in the health care industry have involved long term care facilities (Harris, 4302). Also, case-by-case determinations of appropriate units in nursing homes have not caused undue litigation (Comment 155, IHA). In fact, to the best of our knowledge there is not a single published case since the health care amendments in which the Board had to decide appropriate units in nursing homes, and no party testified that it had experienced problems with case-by-case determinations as to this issue.

In view of the evidence set forth above, we have decided to exclude nursing homes from the rule. The evidence shows that there are not only substantial differences between nursing homes and hospitals but also significant differences between the various types of nursing homes which affect staffing patterns and duties. In the absence of a

measure of uniformity of operation, it would be difficult to establish uniform rules with respect to appropriate bargaining units. It also appears that there is no need at this time for a rule with respect to nursing homes as there has been no prolonged litigation and no party has expressed any problems in this area. We, therefore, conclude that it is best to continue a case-by-case approach with respect to nursing homes. For those facilities which provide both hospital and nursing home services, if the facility is primarily an acute care hospital, it will be treated in its entirety as a hospital; if primarily a nursing home, it will be considered a home, and outside the rule. To do otherwise would further fractionalize bargaining within the facility, and cause more, rather than less, proliferation.

XIV. Specialized Hospitals

Some employers suggested that the Board make a separate rule for specialty hospitals, arguing that they are neither acute care hospitals nor nursing homes (Comment 172, New England Sinai Hospital; King, 4230–31). The evidence with regard to most of the specialty hospitals which participated in the rulemaking did not support a conclusion that there are fewer traditional distinctions between employee groups. However, the evidence demonstrated that psychiatric hospitals, are, for a number of reasons, in a category apart, and the Board has decided to exclude psychiatric hospitals from application of the rule.

Initially, the industry's claimed trend toward one-specialty hospitals is not supported by statistics. The AHA classifies 90% of U.S. private, acute care hospitals as general; of these, 98% are general medical and surgical hospitals and only 2% are pediatric or rehabilitation hospitals. Nine of the remaining ten per cent are psychiatric, a category apart. (AFL Exh. 7, 8.) In California, where the industry contends the trend is particularly strong (Dauner, 3206), there are relatively few specialized hospitals (Silberman, 3209–12).

Most of the comments submitted to the Board from specialty hospitals apart from psychiatric hospitals did not argue that these hospitals should be treated differently from general acute care hospitals. See for example, Comment 4, Le Bonheur Children's Medical Center; Comment 10, National Rehabilitation Hosp.; Comment 123, Children's Memorial Hosp.; and Comment 303, Children's Medical Center, Akron, regarding childrens' hospitals. Although Children's Medical Center of Dallas (Comment 276) states that in that hospital RNs integrate patient care with some other professionals, and Cardinal Glennon Children's Hospital (Comment 271) discusses use of the team approach, neither suggests that childrens' hospitals differ from general acute care hospitals for purposes of rulemaking. While Shriners Hospitals For Crippled Children (Comment 238) were unique in their method of obtaining funds and charging patients, they operate like other acute care hospitals, subscribing to the same rules of licensure and accreditation.

Two hospitals, Children's Hospital of Dayton and Children's Hospital of Cincinnati presented more details regarding the operation of childrens' hospitals (Testimony of Graybill, Sokatch; Comment 288, Graybill). There is evidence that childrens' hospitals have higher acuity and outpatient activities than general acute care hospitals, and as a result have more full time equivalent positions and higher budgets than comparably sized general acute care hospitals (Comment 288). There is also evidence that RNs have a somewhat higher level of interaction with other professionals, for example, interacting with respiratory therapists on ICU units and transports (Graybill, 4183), working on special teams like bone marrow transplants, interacting with pharmacists regarding allergies, and tube sequencing (Comment 288). Even assuming that respiratory therapists are professionals, a status the Board has rejected on some occasions, (see for example, *Samaritan Health Services*, 238 NLRB 629, 638 (1978)), the interaction of RNs with other professionals, including presence on teams, is similar to that shown in other hospitals, and RNs' duties were not shown to be different merely because they may work on teams. As in other acute care hospitals, most nurses in childrens' hospitals are directly or indirectly supervised by other nurses (Graybill, 4147–48, 4164).

Comments from rehabilitation hospitals show similar arguments to those made by general acute care hospitals: that there is increased contact between RNs and other professionals, that there is some cross-training and utilization, that teams are used, that a hospital has across-the-board personnel policies (Comment 172, New England Sinai Hospital; Comment 131, The Institute for Rehabilitation and Research). These commentators did not request special treatment for their hospitals. Of course, to the extent rehabilitation hospitals may be long term, they will not fall within the parameters of the Board's rule, *infra*, which applies only to hospitals whose average patient stay is less than 30 days.

Nor was there a suggestion made by commentators of other, non-psychiatric, single specialty hospitals that their type of hospital merited special rules. For example, the Board received evidence from Springfield General Hospital (Comment 201) and Oklahoma Osteopathic Hospital (Comment 300), both osteopathic hospitals, in opposition to the rulemaking, but not claiming a special status for specialty hospitals.

As noted above, the evidence received on psychiatric hospitals supports an exception for this specialty. Psychiatric hospitals constitute a substantial portion (9%) of private hospitals in the U.S. (AFL Exh. 7). Even the AFL, the only union which took a position on psychiatric hospitals, provided a mixed case for including these hospitals under the rule. Thus, while the AFL argued that psychiatric hospitals which provide short term care are acute care hospitals, it recognized that there is evidence to suggest that at least some professionals play different roles in psychiatric hospitals than in acute care hospitals (citing Albanese/Caswell, Chi I 148–165). Further, the AFL noted that the Board has treated psychiatric facilities differently from other hospitals. Thus, *Mt. Airy Psychiatric Center*, 253 NLRB 1003 (1981), was the only pre *St. Francis II* case in which the Board refused to find appropriate a separate RN unit. Finally, even the AFL acknowledged that the Board might wish to exclude exclusively psychiatric facilities from the rule. (AFL Br. 140, fn.).

The two main industry representatives who presented evidence on psychiatric hospitals strongly urged that psychiatric hospitals not be considered acute care hospitals for purposes of rulemaking. Most of the evidence submitted with regard to psychiatric hospitals came from the National Association of Private Psychiatric Hospitals (Comment 307, Thomas) and from Charter Medical Corporation (Albanese/Caswell, Chi I 148–165). The National Association represents a substantial majority of private psychiatric hospitals in the U.S. Charter Medical represents about 60 psychiatric hospitals. Therefore, the Board considers their evidence to be representative of psychiatric hospitals in general. The other employers representing psychiatric hospitals agree that psychiatric hospitals operate in a distinct manner (Comment 110, Charter Lakeside Hosp.; Comment 35, Massachusetts Chapter of the National

Association; Comment 29, Glen Eden Hospital; Comment 120, HCA Belle Park Hospital; Comment 168, Camelback Hospitals; Comment 298, Palo Verde Hospital).

The evidence showed that unlike other acute care hospitals, psychiatric hospitals do not provide patient care for the physically ill. RNs are not the primary facilitators of health care in psychiatric hospitals. Many professionals participate hands-on with patients. Regardless of which of three basic models a psychiatric hospital follows: medical, milieu, or combined, the programs are highly integrated. RNs' work is closely integrated with the work of clinical psychologists, counselors, social workers, and various types of therapists in a treatment plan as designated by doctors and program coordinators.

There are more professionals other than doctors and RNs in psychiatric facilities than in other acute care facilities. The ratio of RNs to other professionals is about 1:1 regardless of facility size. It appears that non-RN professionals would not have the same concerns about being outnumbered in an all-professional unit as they have expressed regarding organization in acute care hospitals.

Psychiatric hospitals also differ from other acute care hospitals in that there are more paraprofessionals (mental health workers), and all employees are specially trained in relating to the patients as all employees' actions have an impact on patient treatment.

Further, the evidence shows that Congress has distinguished between acute care general and psychiatric hospitals under Medicare by setting special Medicare certification requirements with respect to staffing, treatment planning, teams, etc.

For all these reasons, the Board has decided to exclude "primarily" psychiatric hospitals from its rule for units in acute care hospitals and to proceed as to them on a case-by-case basis. A number of acute care hospitals have psychiatric sections, however, and such hospitals are not thereby excluded from application of the rule unless the psychiatric sections predominate. Nor do we adopt the suggestion of the AFL that the exclusion be limited to hospitals that are "exclusively" psychiatric, as we deem such an exclusion to be too limited. See the definition of "psychiatric hospital" contained in 42 U.S.C. 1395 x (f).

XV. Partially Organized Facilities

In the first Notice of Proposed Rulemaking, we limited the applicability of the rule to petitions for initial organization, and commented that "historically the Board has required decertification petitions to be filed in the certified or recognized unit." (52 FR at 25145). By way of further explanation, the Board added that "when institutions are partially organized we assume that petitions for new units will follow the proposed rules, insofar as possible." (*Id.*)

As indicated *infra*, in Sec. XIX, Combined Units, the principle of *Campbell Soup Co.*, 111 NLRB 234 (1955), will continue to apply to decertification petitions. See also *Westinghouse Electric Corp.*, 115 NLRB 530 (1956). With respect to other types of petitions in partially organized facilities, we wish to amplify our previous remarks.

In the Second Notice of Proposed Rulemaking, "insofar as practicable" language [changed from "insofar as possible"] is now part of the proposed rule. However, there are two different possible situations we can envisage:

(1) Where existing units are in conformity with the new proposed final rule, we can foresee no reason that new petitions, for the same or other units, should not also be in conformity with the new rule.

(2) Where existing units are not in conformity with the new proposed final rule, we can anticipate a number of questions arising with respect to the applicability of the new rules. Where units smaller than those permitted by the rules already exist, may the incumbent petition for a residual unit? May another labor organization? What will be the continued viability of the principles enunciated in *Levine Hospital of Hayward*, 219 NLRB 327 (1975)? In Comment 304, Kaiser Permanente raised a number of these questions, claiming that "many health care employers, including Kaiser Permanente, currently have bargaining relationships with unions in units that are narrower than those set forth in the proposed rules." These issues have not been extensively addressed during the rulemaking proceeding, and it is the Board's judgment that their resolution should, for the time being, be deferred pending the adjudication of particular cases that present these issues. The Board will, in the adjudication of cases, attempt to apply the new rules to these situations insofar as practicable.

XVI. Facilities Covered

The Board stated in its proposed rule that the rule would apply to acute care hospitals, but did not define the term. Noting the concern of some commentators during the Board hearings with the absence of a specific definition, the Board has carefully reviewed a variety of sources in order to reach a definition. In particular, the Board has extensively searched Federal health care legislation, agency regulations, legislative history, industry reference materials, and hearing testimony for an authoritatively based and commonly understood distinction suitable to the goals of rulemaking in the health care industry. Research reveals that there is a commonly understood distinction between acute and long term care facilities, but that the terms are not statutorily defined as such.

The Public Health Service, for example, draws a distinction between acute care and long term care facilities for the purpose of administering special projects and grants (42 U.S.C.S. 296k(a)(4) and (7) (1985)), and for administering grants to nurse practitioners and midwife programs (42 U.S.C.S. 296m(a)(2)(A) (1985)). Various sections of the Social Security Act make the same distinction: e.g., for purposes of determining the scope of review of peer group organizations (42 U.S.C.S. 1320c–3(a)(4)(A) (1986)), and for determining the application of payment in accordance with state reimbursement control systems (42 U.S.C.S. 1395ww(c)(1)(A) (1983)). Despite the repeated use of the terms acute care and long term care, however, no statutory definition is provided.

In regulations promulgated by the Department of Health and Human Services, the agency principally responsible for administering health care legislation, there is also a distinction between acute and non-acute care facilities. The term "like [similar] hospital", for example, is used in reference to the special treatment given sole community hospitals and is defined as a "hospital furnishing short-term, acute care." (42 CFR 412.92(c)(2) (1987)).

Finally, a review of the extensive legislative proceedings surrounding health care legislation and related issues likewise reveals regular use of the acute care/long term care distinction, with the terms "short term hospital" and "acute care hospital" used interchangeably. Here again, though, the use of these terms is so commonplace that no specific definition is provided.

In light of this commonplace usage, but lack of statutory or legislative definition, the Board has adopted the definition of an "acute care hospital" provided by the Dictionary of Health Services Management, edited by Thomas Timmreck, Ph.D., 1982, National Health Publishing, Owings Mills, Maryland.

The Dictionary of Health Services Management defines an "acute care hospital" as a short term care hospital with an average length of patient stay of less than 30 days. This definition was also referred to with apparent approval by the AFL in this proceeding and is used by the American Hospital Association (AFL Exh. 20, AHA Guide to the Health Care Field, 1987).

The definition of a "psychiatric hospital" for the purposes of this rule shall be that set forth in 42 U.S.C. 1395x(f). According to that definition, a psychiatric hospital is an institution which:

(1) Is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) Satisfies the requirements of paragraphs (3) through (9) in the definition of a "hospital" in that statute [§ 1395x(e)];

(3) Maintains clinical records on all patients; and

(4) Meets certain staffing requirements found necessary by the Secretary.

Coverage for the purpose of this rule, then, will include all acute care hospitals as defined. A hospital is covered if its primary service is acute care, regardless of the presence of other non-acute care units at the same facility. Psychiatric hospitals, defined above and dealt with in section XIV, are specifically excluded from coverage. Also excluded are nursing homes.

As previously indicated, rehabilitation and drug-alcohol hospitals that meet the 30-day standard are tentatively included as the Board did not receive sufficient information during the proceedings to distinguish these facilities for the purposes of this rulemaking.

XVII. Decisions To Which Rule Applies

The NPR suggested that the Board's new health care rule would be effective "on a prospective basis only, for petitions filed on and after (30 days after publication of the final rule)." In *St. Vincent Hospital and Health Center*, 285 NLRB No. 64 (Aug. 19, 1987), the Board indicated that while its proposed rulemaking procedure was pending, it would continue to make unit determinations in health care cases on a case-by-case basis utilizing the criteria set forth in *St. Francis Hospital*, 271 NLRB 948 (1984) ("*St. Francis II*"). The Board also reiterated that it would apply its new rule prospectively only to cases in which petitions were filed after the rule became effective. Based on comments received in the record, and upon further consideration, the Board has concluded that its rule regarding appropriate units in the health care industry shall apply to all decisions made on and after the effective date of the rule.

Representatives of unions urged the Board to revise the proposed prospective application of the new rule. One union suggested that the rule should be effective for all cases decided after the rule was published, even if the petition was filed prior to that date (ANA Br. 197). Unions suggested that it would be unsound, if not arbitrary, to disregard the rule in pending cases, considering the vast body of knowledge the Board now possessed by virtue of its rulemaking proceedings (ANA Br. 198, AFL Br. 145–146). The AFL asserted that to apply preexisting law would deny employees the right of self organization. The AFL noted that applying the rule retroactively would not have an ill effect on pending representation cases. The AFL also noted that the Board recently gave retroactive application to its decision in *John Deklewa & Sons*, 282 NLRB No. 184 (Feb. 20, 1987), enfd. *sub nom Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988). Further, the AHA and AFL noted that the Board applied its *St. Francis II* decision retroactively, and remanded many bargaining unit cases to regional directors for further consideration. (AHA Br. 203–204; AFL Br. 145.) ANA also noted the incongruity that could result if the Board enacted a rule that conflicted with pre-rule standards, e.g., finding a unit inappropriate that previously was appropriate. (ANA Br. 204 at n.115.)

The Board has decided that its rule on appropriate bargaining units in the health care industry should be applied to all decisions made on and after the effective date of the rule, which will be 30 days after publication of the final rule in the **Federal Register**. See APA, 5 U.S.C. 553(d). The Board agrees that it would be incongruous to apply the rule as originally stated; that is, only to petitions filed 30 days after publication. Such a rule would arbitrarily affect petitions filed just 1 or 29 days after the rule is published, and could conceivably lead to vastly different results based solely on the timing of the petition. However, the Board will apply its pre-rule standards to cases that issue prior to the effective date of the rule. As we indicated in *St. Vincent*, we deem it unwise either to decline to take any action on pending petitions, or to promulgate a new standard while rulemaking proceedings are pending. We continue to deem it contrary to statutory policy to hold cases pending effectuation of the Board's new rule. Accordingly, all cases that issue prior to the effective date of the rule will be analyzed under *St. Vincent*. If cases currently pending before the Board do not issue prior to the rule's effective date, the Board will not apply the rule *de novo* to such cases. Rather, the Board will, where necessary, remand such pending cases to regional directors to determine the need for a hearing or other appropriate course of conduct in order to permit parties to address the rule.

XVIII. Non-Conforming Stipulations

In the initial proposed rule, the Board stated that it would approve consent agreements providing for elections in accordance with the units set forth in the rule, and that no other agreements would be approved. Several commentators urged the Board to permit stipulated units even when they do not comport with those specified in the rule. We have been persuaded that permitting non-conforming stipulations, which are not prohibited by the Act, may, in many instances, better serve the interests of the parties, and perhaps even the Board. The Board therefore has tentatively decided to allow its regional directors to approve stipulations providing for elections in units not provided for in the rules.

It is the Board's established practice in other areas to permit parties to stipulate to the appropriateness of units and to various inclusions and exclusions if the agreement does not violate any express statutory provision or established Board policies. See, e.g., *SCM Corporation*, 270 NLRB 885, 886 (1984). This policy on stipulated units was extended to the health care industry in *Otis Hospital*, 219 NLRB 164 (1975). The Board there reasoned that it is consonant with the design of the Act to give the parties in representation proceedings the broadest permissible latitude to mutually define the appropriate unit. The Board stated that when the parties' perceptions coincide regarding unit appropriateness, in the absence of a statutory command or policy considerations within the Board's expertise, the Board is not the better judge. The Board noted in *Otis Hospital* that the legislative history of the 1974 health care amendments supports the application of general policy regarding stipulated units to the health care industry.

Our expertise acquired throughout this rulemaking proceeding gives us considerable pause with regard to stipulations not in accordance with our proposed rules. Thus, stipulations in conformity with these rules would surely be preferable. However, we recognize the possibility that the parties have their own reasons for preferring to bargain in some other configuration.

Moreover, we note that the majority of certifications issued in representation cases in the health care industry following enactment of the amendments followed either a consent or stipulated election and that these elections gave rise to challenges less often than directed elections. Annual Reports of the National Labor Relations Board, Tables 9, 11B. In view of Congress' concern with stability in health care labor relations, the importance of reducing unnecessary litigation, and expeditiously proceeding with elections, permitting stipulations, even when they do not conform to the Board's explicitly drawn units, seems warranted. For these reasons, we have decided that the reasoning of *Otis Hospital* should remain applicable despite this rulemaking proceeding.

To the extent a stipulation may later result in the creation of a residual group of unrepresented employees, the Board will address their representation concerns as it would those of other groups of residual employees present in partially organized acute care hospitals—on a case-by-case basis applying the rules insofar as practicable.

Despite our tentative decision to accept non-conforming stipulations, we expressly invite any interested party to comment further on this problem during the period provided for comments.

XIX. Combined Units

The Notice of Proposed Rulemaking provided that, in addition to the specified units, "any combination will also be appropriate, at the union's option and so long as the requirements of section 9(b) (1) and (3) are met." The reason for the reference to the union's option was that the union, as petitioner,[26] need seek only *an* appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 417–18, enfd. on other grounds 190 F.2d 576 (7th Cir. 1951); *Parsons Investment Co.*, 152 NLRB 192, 193 at fn. 1 (1966). It does not benefit an employer to have the option of showing that another unit, perhaps a combined unit, is also appropriate, or even more appropriate, since the appropriateness of an alternative unit is not the issue. *Parsons Investment Company, supra; Federal Electric Corporation*, 157 NLRB 1130, 1131-32 (1966). We therefore reject arguments by some employers that it is unfair to give only unions the option of combining units. (See, e.g., AHA Br. 49; Comment 258, Durham, attorney for California Association of Health Facilities.)

However, upon reflection, we believe that we defined too broadly a union's option to seek, alternatively, combined units. In the NPR, as indicated, we implied that *any* combination of the enumerated units would also be appropriate; after giving this matter further thought, we believe that we have insufficient evidence at this time to say that, *per se*, all combinations will be found appropriate. We believe this is a matter we will have to decide in the course of individual cases, by adjudication. While there are some combinations that, while not required under these rules, would obviously be appropriate, such as all professionals, or all non-professionals, there may be other, more unusual combinations that need to be examined for appropriateness. We meant to say only that combinations of the enumerated units are not thereby precluded, and we have therefore modified the rule to provide that combinations "may" be appropriate.

XX. Extraordinary Circumstances Exception

The Board has, in order to ensure satisfaction of parties' due process rights,[27] included in both the proposed rule and the final rule an exception for "extraordinary circumstances." The exception has been provided to allow for the possibility of individual treatment of uniquely situated acute care hospitals, so as to avoid accidental or unjust application of the rule.[28] However, the Board wishes to emphasize that while the rule does not, therefore, conclusively establish invariable parameters of bargaining units in the industry, our intent is to construe the extraordinary circumstances exception narrowly, so that it does not provide an excuse, opportunity, or "loophole" for redundant or unnecessary litigation and the concomitant delay that would ensue. The Board has considered fully and at length all evidence presented and arguments submitted at the rulemaking hearings and during the comment period. None of the referred-to variations between acute care hospitals, some of which are enumerated below, are matters which would qualify for litigation under the special circumstances exception; rather, they are merely minor differences, inherent in the industry due to the multiformity of individual constituent institutions. The Board deems such variations to be ordinary, and hence by definition not extraordinary,[29] even in situations in which such variations may be highly unusual.[30]

Among the variations in acute care hospitals illustrated at the hearings and considered by the Board are arguments relating to: (1) Diversity of the industry, such as the sizes of various institutions, the variety of services offered by individual institutions, including the range of outpatient services provided, and differing staffing patterns among facilities (as, for example, a particular facility employing a larger or smaller number of RNs than generally employed by similarly situated hospitals); (2) increased functional integration of, and a higher degree of work contacts between, employees as a result of the advent of the multi-competent worker, increased use of "team" care, and cross-training of employees; (3) the impact of nation-wide hospital "chains"; (4) recent changes within traditional employee groupings and professions, e.g., the increase in specialization among RNs; (5) the effects of various governmental and private cost-containment measures; and (6) single institutions occupying more than one contiguous building. Except as specifically noted elsewhere (e.g., exclusion of psychiatric hospitals and nursing homes from coverage by the rule), the Board has concluded that none of the arguments raised in the course of the rulemaking procedure, including those listed above,[31] alone or in combination, constitutes an "extraordinary circumstance" justifying an exception from the rule.

The Board is well aware that facilities will, and do, differ in some respects; however, as we observed in the NPR (52 FR 25144), it is the Board's considered judgment, after issuing health care decisions by adjudication for more than

[26] If the employer is the petitioner (RM petition), its petition must seek the unit requested by the union. *Wm. Wood Bakery*, 97 NLRB 122 (1951); *Restaurant & Tavern Owners Association of Salem*, 126 NLRB 671 (1960). If the petition seeks decertification, it must be filed in the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955).

[27] See *Chemical Manufacturers Assn. v. Natural Resources Defense Council*, 470 U.S. 116, 133 n.25 (1985); *Heckler v. Campbell*, 461 U.S. 458, 467 (1982); *FPC v. Texaco, Inc.*, 377 U.S. 33, 40 (1964); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956); *National Broadcasting Company v. United States*, 319 U.S. 190, 225 (1943); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); 1 C. Koch, *Administrative Law and Practice* § 4.112 at 321–23 (1985).

[28] Cf. *National Nutritional Foods Assn. v. FDA*, 504 F.2d 761, 784 (2d Cir. 1974), cert. denied 420 U.S. 946 (1975), citing *The New England Divisions Case*, 261 U.S. 184, 204 (1923).

[29] See *Bollman v. Indianapolis Machinery Co.*, 150 Ind. App. 296, 276 N.E.2d 606, 613 (1971); *Black's Law Dictionary* 527 (rev. 5th ed. 1979), and cases cited therein.

[30] See *Kugler v. Helfant*, 421 U.S. 117, 125 (1975).

[31] The arguments listed were selected by way of example and not by way of limitation, and were chosen merely as being illustrative of the Board's intent.

13 years, that acute care hospitals do not differ in substantial, significant ways relating to the appropriateness of units.[32] Moreover, to the extent that the rulemaking hearings demonstrated that at least in some respects acute care hospitals do vary, the Board has made a judgment that, in this area of establishing appropriate units, "[d]etailed analyses of all the facts of the particular case are just not that enlightening," [33] and that the policies of the Act would better be effectuated by the establishment of appropriate units in the enumerated segments of this industry by exercise of the Board's section 6 rulemaking authority.[34]

To satisfy the requirement of "extraordinary circumstances," a party would have to bear the "heavy burden" to demonstrate that "its arguments are substantially different from those which have been carefully considered at the rulemaking proceeding," [35] as, for instance, by showing the existence of such unusual and unforeseen deviations from the range of circumstances revealed at the hearings and known to the Board from more than 13 years of adjudicating cases in this field, that it would be unjust [36] or an abuse of discretion [37] for the Board to apply the rules to the facility involved.

The Board, contrary to some industry representatives (e.g., Comment 148, Mississippi Hosp. Assn.), anticipates that litigation under the "extraordinary circumstances" exception will be rare; the AHA, representing the largest group of health care employers in this proceeding, has indicated it understands that the Board intends to limit exceptions to "truly extraordinary situations" (AHA Br. 55–56), and neither the AHA nor any other employer (or union) representative has raised objections to the Board's stated intent.

In most instances, should a facility claim it comes within the "extraordinary circumstances" exception, it should present an offer of proof to the Hearing Officer, who will then either permit the requested evidence to be adduced or, we anticipate far more commonly,[38] refer the offer to the Regional Director, and, if requested, ultimately to the Board, for ruling.

XXI. Proliferation

As set forth in considerable detail, *supra*, the evidence taken during the rulemaking proceeding has convinced the Board, contrary to its earlier belief, that eight possible units (seven plus guards) should be found appropriate in acute care hospitals. In reaching this conclusion, the Board has carefully considered the Congressional admonition against proliferation set forth in the legislative history of the 1974 health care amendments as well as its own strongly-held view that the number of units found appropriate should not be so many as to lead to a splintering of the workforce into the myriad of occupations and professions found within the industry. The Board has examined the units found appropriate to ensure they are not so numerous as to create a never-ending round of bargaining sessions, and that each unit represents truly distinctive interests and concerns. A number of groups of employees found appropriate have separate labor markets. A thorough examination of the record in this rulemaking proceeding has satisfied us that the health care units established by the Board do not constitute proliferation either in terms of the legislative history of the amendments or in the context of the history or realities of the industry.

We believe that Congressional and industry concern with proliferation was directed towards the fifteen to twenty plus units that had arisen in the health care and other industries prior to the amendments and the possibility of scores of units if each hospital classification were permitted to organize separately. IUOE Br. 96–97: Legislative History of the Coverage of Non-Profit Hospitals Under the National Labor Relations Act at 113–114 (Senator Taft); Hearings on S. 794 and S. 2292 Before the Subcommittee on Labor and Public Welfare, 93rd Cong., 1st Sess. 1973 at 175 (David Brekke, Colorado Hospital Association), 181 (O. Ray Hurst, Texas Hospital Association), 188 (William Whelan, California Hospital Association), Sidney Lewine, 138–139 (American Hospital Association), 563–564 (exchange between Senator Taft and Andrew Biemiller of the AFL–CIO). See also testimony in 1971 and 1972 hearings, cited in IUOE Br. 96–97.

By 1974, a number of state and agency decisions with respect to non-profit hospitals, and Board decisions with respect to proprietary hospitals, had permitted each profession, and in some cases each craft, to form a separate bargaining unit (See discussion in AFL Br. 2–3, 28). As stated in Senator Taft's proposal, Congress feared that patterns such as developed in construction and newspaper industries—wherein units were permitted for each craft, resulting in 15–20 or more units—would result in separate units for the equally, if not more, numerous classifications in a hospital. We find no evidence that Congress opposed a smaller number of units. Thus, Senator Taft's proposal, containing special rules for the health care industry, would have established five units as presumptively appropriate: Technical, clerical, service and maintenance, all professional, and guards, two more than the statutorily mandated three units (professional, non-professional, and guards). The Board's addition of three units, RNs, physicians, and skilled maintenance, raising the total number of proposed possible units to eight, still constitutes half or fewer of the number of units that seem to us to have concerned Congress.

Furthermore, the record shows that the hospital industry understood proliferation to mean a much greater multiplicity of units than is proposed here. The League of Voluntary Hospitals of New York, an association of 54 nonprofit medical centers, hospitals, and nursing homes, and the largest organization of its kind in the country, supported the 1974 amendments because the League wished to remove itself from New York State health care coverage under which there were potentially 15–20 or more units in a health care facility (WS Abelow). Indeed, the American Hospital Association proposed a five-unit configuration: Professional, technical, clerical, service and maintenance, and guards. Hearings on S. 794 and S. 2292 Before the Subcommittee on Labor and Public Welfare, 93rd Cong., 1st Sess. 1973, Sidney Lewine, 140.

There is little evidence that the number of units proposed by the Board will result in proliferation or in the problems perceived to arise from proliferation. The units proposed by the Board are only potential units. Indeed,

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[32] See, e.g., NLRB Exhibit 5, revised, showing that for the 13 years since passage of the health care amendments, variations among facilities and their methods of operation had virtually no effect on the Board's ultimate decisions reached following frequently lengthy, case-by-case adjudications as to appropriate units.

[33] Subrin, *Conserving Energy at the Labor Board: The Case for Making Rules on Collective Bargaining Units*, 32 Lab. L.J. 105, 107 (1981).

[34] See *Cummins* v. *Schweiker*, 670 F.2d 81, 83 (7th Cir. 1982).

[35] *Basic Media, Ltd.* v. *FCC*, 559 F.2d 830, 834 (D.C. Cir. 1977). Accord, *P & R Temmer* v. *FCC*, 743 F.2d 919, 930 n.11 (D.C. Cir. 1984); *Industrial Broadcasting Co.* v. *FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970). See also *WAIT Radio* v. *FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972), cert. denied 409 U.S. 1027 (1972); *WAIT Radio v.* FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[36] *National Nutritional Foods Assn. v. FDA*, 504 F.2d 761, 763 (2d Cir. 1974), cert. denied 420 U.S. 946 (1975).

[37] *P & R Temmer* v. *FCC*, 743 F.2d 919, 929 (D.C. Cir. 1984); *Ashland Exploration, Inc.* v. *FERC*, 631 F.2d 817, 823 (D.C. Cir. 1980).

[38] See 1 C. Koch, *Administrative Law and Practice* section 4.112 at 323 (1985).

two of the units, physicians and guards, are rarely sought. A successful organizing effort in one unit in a hospital does not appear to have a ripple effect causing further organization. The record shows that from the 1974 health care amendments until the Board's 1984 decision in *St. Francis II*, most health care units fell into the categories now proposed by the Board. However, the majority of organized hospitals only had one unit, and about 80% had three or fewer units. (AFL Exh. 5 p. 1; SEIU, WS Shea, Table 2.) Nor, as detailed *supra*, was there a showing that the configuration of units proposed by the Board have resulted in an increased number of strikes, jurisdictional disputes, or other disruptions in the delivery of health care services.

Finally, as shown above, the empirical evidence submitted in these proceedings strongly supports the appropriateness of each of the units proposed by the Board.

For all the above reasons, we conclude that our proposal for seven units plus guards is not only well within our discretion, but also consistent with both our own and Congress' concerns about proliferation.

XXII. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the NLRB in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so they can participate effectively in the rulemaking process; and (2) to serve as the record in case of judicial review. As provided in the first NPR (52 FR 25148), the docket, including a verbatim transcript of the hearings, the exhibits, the written statements, and all comments submitted to the Board, is available for public inspection during normal working hours at the Office of the Executive Secretary in Washington, DC.

XXIII. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Board certifies that the proposed rule will not have a significant economic impact on small entities. Prior to this rule, parties before the Board were required to litigate the appropriateness of a unit for election purposes if they could not reach agreement on the issue. Upon enactment of this rule, parties will no longer be required to engage in litigation to determine the appropriateness of units, thereby saving all parties the expense of litigation before the Board and the courts. To the extent that organization of employees for the purpose of collective bargaining will be fostered by this rule, thereby requiring small entities to bargain with unions, and that employees may thereby exercise rights under the National Labor Relations Act, as amended (29 U.S.C. 151 *et seq.*), the Board notes that such was and is Congress' purpose in enacting the Act and the health care amendments thereto.

XXIV. Regulatory Text

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the prior pages, it is proposed to amend 29 CFR Part 103 as follows:

PART 103—OTHER RULES

1. The authority citation for 29 CFR Part 103 is revised to read as follows:

Authority: 29 U.S.C. 151, 156; 5 U.S.C. 500, 533.

2. Subpart C, consisting of § 103.30, is added to read as follows:

Subpart C—Appropriate Bargaining Units

Sec.
103.30 Appropriate bargaining units in the health care industry.

Subpart C—Appropriate Bargaining Units

§ 103.30 Appropriate bargaining units in the health care industry.

(a) This portion of the rule shall be applicable to acute care hospitals, as defined in paragraph (f) of this section: Except in extraordinary circumstances and in circumstances in which there are existing non-conforming units, the following shall be appropriate units, and the only appropriate units, for petitions filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B) of the National Labor Relations Act, as amended, except that various combinations of units may also be appropriate:

(1) All registered nurses.
(2) All physicians.
(3) All professionals except for registered nurses and physicians.
(4) All technical employees.
(5) All skilled maintenance employees.
(6) All business office clerical employees.
(7) All guards.
(8) All nonprofessional employees except for technical employees, skilled maintenance employees, business office clerical employees, and guards.

(b) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate units set forth in paragraphs (a) (1) through (8) of this rule.

(c) Nothing shall prevent the Board from holding additional hearings concerning the specific job classifications to be included in, or excluded from, each of the above units, and from establishing additional rules about such matters.

(d) The Board will approve consent agreements providing for elections in accordance with paragraph (a) of this section, but nothing shall preclude regional directors from approving stipulations not in accordance with paragraph (a), as long as the stipulations are otherwise acceptable.

(e) This rule will apply to all cases decided on or after the effective date of the final rule.

(f) For purposes of this rule, the term "acute care hospital" is defined as a short term care hospital in which the average length of patient stay is less than thirty days. The term "acute care hospital" shall include those hospitals primarily operating as acute care facilities even if those hospitals provide such services as, for example, long term care, outpatient care, or psychiatric care, but shall exclude facilities that are primarily nursing homes or primarily psychiatric hospitals. The definition of "psychiatric hospital" shall be as set forth in 42 U.S.C. Sec. 1395 x (f), Social Security Act. A "non-conforming unit" shall be defined as a unit not in conformity with paragraphs (a) (1) through (8) of this rule.

(g) Appropriate units in all other health care facilities: The Board will establish appropriate units in other health care facilities, as defined in section 2(14) of the National Labor Relations Act, as amended, on a case-by-case basis.

XXV. Dissenting Opinion

Member Wilford W. Johansen, dissenting:

As amply documented in the Notice of Proposed Rulemaking in the **Federal Register** on July 2, 1987, there has been no universal acceptance in the circuit courts of a standard for formulating appropriate units in the healthcare industry. Some courts have simply substituted their own judgment for that of the Board on the question of what constitutes an appropriate unit. Frequently a court has apparently supported its conclusion by a selective reading of portions of the legislative history of the 1974 Amendments. The

Board in turn has reacted first by trying to explicate that the differences might be "largely semantic" (*Newton-Wellesley Hospital*, 250 NLRB 409 (1980)), then by reversing field and adopting the test advocated by the Ninth Circuit (*St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*)). That course in turn was roundly criticized by the D.C. Circuit. (*Electrical Workers IBEW Local 474* v. *NLRB (St. Francis Hospital)*, 814 F.2d 697 (1987)). The Board's reaction was to try yet a different approach—i.e., rulemaking.

With all due respect, I disagree. Rulemaking in regard to healthcare units is neither desirable nor appropriate.

First, it is my view that the appropriate method for resolution of questions surrounding the interpretation of Congress' intent, the proper scope of review, and the Board's duty and authority under the statute, is to submit these questions to the Supreme Court, which is the final arbiter on issues of this nature. Submission to the Court is especially appropriate in this area. Second, the Board has received criticism from the courts at both ends of the spectrum. Most of the criticism and disagreement has centered around application of the traditional community of interest standard, versus a separately derived "disparity of interest" test for evaluating units in the healthcare industry.

Thus, the Ninth Circuit, in an early *St. Francis* hospital case, faulted the Board for applying what the court deemed a too rigid presumption *in favor* of a registered nurses unit; and enunciated a "disparity of interest" standard which it deemed necessary for assessing healthcare units. More recently, after the Board itself decided to adopt the disparity of interest standard, the District of Columbia Circuit in yet another *St. Francis* case, severely criticized the Board's action, and strongly "suggested", that some form of the historically accepted community of interest standard is required. Hence the Board is faced with some courts which have indicated a definite preference for the so-called "disparity of interest" analysis. Other courts are equally adamant that nothing in the 1974 Amendments indicates that the Board was to abandon the community of interest standard which had served well for the previous forty years, and of which Congress was cognizant at the time of the Amendments.

It is apparent that the disagreements involve questions concerning the meaning of the statute, analysis of the legislative history, and the deference to be properly accorded to the Board's reading and interpretation of the Act, which is the Board's primary function and responsibility. These questions are all particularly appropriate for submission to, and final resolution by, the Supreme Court. This avenue is also the one which best serves the interests of the parties, the general public, and the Board itself.

Section 9(b) of the Act provides that

> The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *.

I do not read the above language as permissive. It is mandatory. The Board cannot satisfactorily fulfill its statutory obligation by relegating its specialized decisional function in this area to rulemaking procedures. That is not to suggest that I disapprove of rulemaking per se. On the contrary, I agree that rulemaking is desirable, and even a necessary part of the Board's function, in some areas. This is not one of those areas. I believe it is important to keep in mind that Congress did *not* amend Section 9 when it enacted the Healthcare amendments in 1974. Had Congress intended that the Board abandon the decisional approach and utilize a wholly new procedure for determining appropriate units in the healthcare industry, Congress would have told us so explicitly. It did not. Nor did it even implicitly suggest such action. The rule changes cited by the majority (e.g. contract bar, *Excelsior* list, etc.) in support of this radical departure from 50 years of Board precedent, (a) were arrived at decisionally, and; (b) did not involve unit determinations.

There are additional factors which make rulemaking on particular units, at best, inadvisable. Units established by rulemaking will continue to be criticized by courts that deem the Board's approach to healthcare unit determinations to be too rigid. Indeed, as unit specifications derived from a predetermined set of rules are inherently less flexible than those arrived at by decision in individual cases, criticism by some courts may even intensify on the ground that the Board has not arrived at a result through the application of its institutional expertise to a particular fact pattern.

Contrary to the stated expectations of my colleagues, setting unit configurations by rulemaking will not in fact substantially reduce the amount of litigation in this area. It may serve to change part of the focus of that litigation, while at the same time creating more. The amount of evidence produced in rulemaking is not the point. The difficulties encountered over the last several years have not been for lack of evidence. Rather, they have revolved around differing interpretations of the statute and, particularly, the legislative history and the deference to be accorded the Board and its expertise in its role as the primary decision maker under the Act. I do not see that announcing rules by administrative fiat will resolve the divergent views on these fundamental questions. We still will not have obtained a definitive resolution of the basic issues which is so sorely needed.

I would, therefore, vacate the notices of proposed rulemaking and submit the extant issues to the Supreme Court for resolution.

Dated, Washington, DC, August 25, 1988.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 88-19688 Filed 8-31-88; 8:45 am]

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Thursday
September 1, 1988

Part III

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL-3361-6]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 21, 1985, the Environmental Protection Agency (EPA or the Agency) published a Notice of Proposed Rulemaking to amend the financial responsibility requirements concerning liability coverage for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) permitted under the Resource Conservation and Recovery Act (RCRA) (50 FR 33902). The proposal set forth several regulatory options, including the authorization of additional financial mechanisms for covering third-party liability requirements, under consideration by the Agency to provide relief for owners and operators who encounter difficulties in obtaining liability insurance. On July 11, 1986, EPA published an interim final rule allowing use of a corporate guarantee as an additional financial responsibility mechanism (51 FR 25350). This rule was issued in final form on November 18, 1987 (52 FR 44314).

EPA is today adopting other financial mechanisms for liability coverage for RCRA TSDFs. These mechanisms are letters of credit, surety bonds, trust funds, and guarantees provided by firms that are not the direct parent of the owner or operator. In addition, the Agency is clarifying the liability insurance requirements to ensure that other firms can purchase insurance for owners and operators of hazardous waste management facilities.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: The regulatory docket for this rulemaking is available for public inspection at Room S-212-E, 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. The docket number is F-88-CGF1-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy a maximum of 50 pages from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll free, at (800) 424-9346 or, in Washington, DC, at (202) 382-3000. For technical information, contact Carlos M. Lago, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4780.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority
II. Background
  A. Current Liability Coverage Requirements
  B. August 21, 1985, Notice of Proposed Rulemaking
  C. Rulemaking Authorizing the Corporate Guarantee
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III. Additional Financial Responsibility Mechanisms Being Authorized for Liability Coverage
  A. Letter of Credit
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V. Other Issues Presented in the Notice of Proposed Rulemaking
  A. Maintain, Suspend, or Withdraw Existing Liability Coverage Requirements
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  C. Mechanisms Considered But Not Adopted
  D. Authorize Waivers
VI. Consistency with Other Existing and Proposed Financial Assurance Requirements
VII. Technical Correction to 40 CFR 264.151(b)
VIII. Effective Date
IX. State Authority
  A. Applicability of Rules in Authorized States
  B. Effect of Rule on State Authorizations
X. Executive Order 12291
XI. Regulatory Flexibility Act
XII. Supporting Documents

I. Authority

This regulation is being adopted under the authority of sections 2002(a), 3004, and 3005 of the Solid Waste Disposal Act; as amended by RCRA, as amended (42 U.S.C. 6912(a), 6924, and 6925).

II. Background

A. Current Liability Coverage Requirements

Section 3004(a)(6) of RCRA, as amended, requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

On April 16, 1982, EPA promulgated regulations requiring owners or operators to demonstrate liability coverage during the operating life of the facility for bodily injury and/or property damage to third parties resulting from accidental occurrences arising from facility operations (47 FR 16554). Under these regulations (40 CFR 264.147 and 265.147), an owner or operator of a hazardous waste treatment, storage, or disposal facility must demonstrate, on a per-firm basis, liability coverage for sudden accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. An owner or operator of a surface impoundment, landfill, or land treatment facility used to manage hazardous waste is also required to demonstrate, on a per-firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs. (A "nonsudden accidental occurrence," as opposed to a "sudden accidental occurrence," is defined by 40 CFR 264.141 and 265.141 as an occurrence that takes place over time and involves continuous or repeated exposure.) "First-dollar" coverage is required; that is, the amount of any deductible must be covered by the insurer, who may have a right of reimbursement of the deductible amount from the insured.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually according to annual dollar sales or revenue figures of the owner or operator. January 16, 1985, was the final phase-in date.

Financial responsibility for third-party liability currently can be demonstrated by obtaining insurance, by passing a financial test, or by obtaining a corporate guarantee from a parent corporation that passes the financial test. The regulations (40 CFR 264.147(a)(3), 264.147(b)(3), 265.147(a)(3), and 265.147(b)(3)) also allow an owner or operator to meet the liability requirements through a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance.

B. August 21, 1985, Notice of Proposed Rulemaking

In 1984–1985, the availability of pollution liability insurance policies began to decline. A number of insurers who previously had offered coverage ceased to write pollution liability policies. Those still offering coverage raised their premiums substantially while reducing the coverage provided. As a consequence, some owners and operators of hazardous waste TSDFs began to experience difficulties in obtaining necessary coverage and/or paying the increased cost of such coverage.

In response to this situation, EPA took a number of steps, including issuing on August 21, 1985, a Notice of Proposed Rulemaking (NPRM) (50 FR 33902) requesting comment on five possible regulatory options as responses to the problem of reduced availability and increased cost of pollution liability insurance: (1) Maintain the existing requirements; (2) clarify the required scope of coverage and/or lower the required levels of coverage; (3) authorize other financial responsibility mechanisms; (4) authorize waivers; and (5) suspend or withdraw the liability coverage requirements.

EPA received numerous comments from four major categories of commenters on the August 21, 1985, NPRM: Owners and operators of hazardous waste TSDFs; members of the insurance industry; representatives of State and local governments; and members of the public at large. A majority of commenters encouraged the Agency to retain the existing coverage limits and encouraged the Agency not to suspend or withdraw the liability coverage requirements. Numerous commenters did, however, ask EPA to consider waivers in certain circumstances. Some commenters requested EPA to clarify the scope of coverage required or to lower the required limits of coverage, but many commenters urged EPA to authorize additional financial mechanisms that would provide an alternative to insurance. Commenters specifically mentioned mechanisms such as corporate guarantees, surety bonds, letters of credit, and trust funds for use for liability coverage. The commenters, however, did not discuss in detail any of these mechanisms.

Upon analysis of comments received, studies of the cost and availability of the instruments, analysis of the suitability of proposed financial instruments for liability coverage, and consultation with banks and State insurance commissioners, EPA has decided to maintain the existing coverage requirements, while authorizing additional financial responsibility mechanisms for liability coverage. Sections III and V of this preamble discuss the mechanisms being authorized and existing approaches to waivers. The Agency's summary of and responses to comments urging it to change existing requirements on the scope and levels of coverage are provided in Section V of this preamble. Additionally, more specific discussion and response to comments is found in documents included in the docket for today's rule.

C. Rulemaking Authorizing the Corporate Guarantee

In response to the commenters on the August 21, 1985 NPRM who argued that EPA should authorize other financial instruments for liability coverage, EPA examined several additional mechanisms for liability coverage. Commenters particularly encouraged EPA to authorize a corporate guarantee for liability coverage, noting that such guarantees were already authorized as financial assurance mechanisms for closure and post-closure care (40 CFR 264.143(f), 264.145(f), 265.143(e), and 265.145(e)). In response, on July 11, 1986, the Agency issued an interim final rule revising 40 CFR 264.147, 264.151, and 265.147 to authorize, in addition to insurance and the financial test, the use of a corporate guarantee for liability coverage (51 FR 25350). The Agency subsequently made minor revisions to the rule authorizing the corporate guarantee for liability coverage, and finalized that rule on November 18, 1987 (52 FR 44314). As discussed in Section III of this preamble, today's rule further expands the availability of the guarantee by allowing firms that are not the direct corporate parent of the owner or operator to be the guarantor.

D. Justification for Today's Rule

The Agency believes that additional mechanisms for liability coverage are desirable in order to provide a broad set of options for owners or operators who must demonstrate liability coverage but who cannot use one of the existing mechanisms. Although commentary concerning the insurance industry in the Insurance Trade Press and in other sources suggests that underwriting losses in property-casualty insurance peaked around the end of 1985 and that the outlook for the future is more favorable,[1] the market for Environmental Impairment Liability (EIL) insurance has remained constrained.[2] Accordingly, the Agency is seeking to ensure that as many alternative financial assurance mechanisms as possible are available to the regulated community, to reduce the problem created by the constrained insurance market.

Section 3010(b) of RCRA provides that regulations promulgated under Subtitle C of the statute and revisions to existing Subtitle C regulations generally take effect six months after promulgation. However, the period prior to the effective date may be shortened if the Administrator finds the regulated community does not need six months to come into compliance or for other good cause. As the regulation does not add any additional compliance requirements and a six-month period prior to implementation would be contrary to the interest of the regulated community and public by delaying the availability of other compliance mechanisms, the regulatory changes are being issued as a final rule effective 30 days after publication.

E. Key Provisions of Today's Rule

In today's rule, EPA authorizes owners or operators of hazardous waste TSDFs to use the following additional financial assurance mechanisms for liability coverage: A letter of credit; a surety bond assuring payment of liability claims; a fully-funded trust fund; and a guarantee provided by a firm that is not the direct parent of the owner or operator. The Agency is generally not revising the scope and levels of coverage required for third-party liabilities. However, today's rule includes amendments clarifying the liability coverage requirements to allow other firms to purchase insurance for owners and operators. Finally, EPA is specifying more clearly the aggregate amount of coverage that must be provided by financial responsibility mechanisms that offer combined coverage for sudden and nonsudden occurrences.

III. Additional Financial Responsibility Mechanisms Being Authorized for Liability Coverage

In determining which additional financial assurance mechanisms to

[1] United States General Accounting Office, Statement by William J. Anderson before the House of Representatives on "Profitability of the Property/Casualty Insurance Industry," March 13, 1986.

[2] National Association of Insurance Commissioners, "Report of the NAIC Advisory Committee on Environmental Liability Insurance," September, 1986; and "Business Insurance," April 16, 1987, p. 58; May 4, 1987, p. 22; and May 11, 1987, p. 71.

approve for liability coverage, EPA reviewed the other financial assurance programs within EPA, other Federal agencies, and several States. The Agency first analyzed the financial mechanisms already approved for use for closure or post-closure care financial assurance since the regulated community could be expected to be familiar with them. Many of these mechanisms were mentioned by commenters on the August 21, 1985 NPRM as potentially useful. Other EPA financial assurance requirements or proposed requirements, such as the requirements for underground injection wells and underground storage tanks, were also reviewed to identify the mechanisms, if any, used in those programs for third-party liability coverage.

The Agency considered several characteristics of the mechanisms that could affect their suitability for the coverage of third-party liability claims, including (1) availability; (2) cost; (3) whether they are likely to be valid and enforceable contracts under special provisions of State law, such as laws regulating the business of insurance; and (4) whether they are capable of being set up in ways that do not require EPA to act as a "claims adjuster" or otherwise act to determine the merits of third-party liability claims brought against TSDF owners or operators.

On the basis of these analyses, EPA determined that letters of credit, surety bonds, guarantees, and trust funds provide adequate third-party liability coverage. The rationale for authorization of these instruments is described below in the discussion of each instrument.

Other mechanisms suggested by the commenters on the August 1985 NPRM and analyzed by EPA included security interests, indemnity contracts, reserve funds, captive insurance pools, and government-supplied insurance or loan guarantees. As discussed in Section V of today's preamble, EPA has concluded that these instruments are inappropriate, with the exception of captive insurance pools and risk retention groups. Captive insurance pools and risk retention groups are authorized under the current regulations.

The financial mechanisms authorized in today's rulemaking, with the exception of the guarantee, are currently approved mechanisms for closure or post-closure care under 40 CFR Parts 264 and 265, Subpart H. (Performance bonds, which are authorized for use by owners or operators of permitted facilities for assurance for closure and post-closure care, are not included because they are not adaptable to liability coverage; instead, an analogous mechanism, the payment bond, is allowed.) The requirements for these financial mechanisms parallel the requirements for financial mechanisms authorized for closure or post-closure care. However, some provisions of the mechanisms have been adjusted to address issues that arise only in the context of liability claims. Features of the mechanisms that differ include the designation of the beneficiary, exclusions for categories of damages and obligations, the claims-payment trigger, the certification of validity and enforceability, and cancellation provisions. These features are described more fully in Section IV of today's preamble.

A. Letter of Credit

Today's rule authorizes owners or operators of hazardous waste TSDFs to use letters of credit to satisfy the RCRA third-party liability coverage requirements (40 CFR 264.147(a)(3), 264.147(b)(3), 265.147(a)(3), and 265.147(b)(3)). Letters of credit are commitments by a financial institution (e.g., a bank), whose letter of credit operations are regulated and examined by a State or Federal agency, to provide funds if appropriate documents are presented. In general, letters of credit are instruments that can be adapted for various purposes.[3] Banks contacted by EPA have indicated that they would consider issuing letters of credit for liability claims for their established customers. EPA believes that letters of credit may be more readily available to owners or operators than many other mechanisms, if the owner or operator has an established relationship with a qualifying financial institution and can provide adequate collateral.

1. *Features of Mechanism.* A letter of credit is a financial instrument under which an issuing institution (the issuer), generally a bank, undertakes to meet a monetary obligation of its customer (the account party) if the bank is presented with specified documents. The issuer, in return for a fee, becomes the primary obligor. A third party, the beneficiary, initiates payment by making a claim directly on the issuer. Thus, a letter of credit is an instrument that substitutes the issuer's superior credit for the account party's credit.

The instrument authorized in today's rule is an irrevocable stand-by letter of credit in which the third-party beneficiaries are any and all persons who may be damaged by a hazardous waste release from the facility whose owner or operator has secured the letter of credit. The irrevocable nature of the instrument precludes its cancellation prior to the end of a required one-year term by the issuer or the owner or operator. After the one-year term, the letter of credit will automatically renew for another year unless, 120 days before the expiration date, the issuer notifies the owner or operator and the Regional Administrator of a decision not to renew the credit (40 CFR 264.151(k)).

2. *Who May Provide A Letter of Credit.* Today's rule provides that letters of credit for liability coverage must be provided by an authorized financial institution regulated by a Federal or State agency (40 CFR 264.147(h)(2) and 265.147(h)(2)). EPA has established these requirements, which parallel the requirements for letters of credit providing assurance for closure or post-closure care, to ensure the financial viability of the issuer of the letter of credit. The viability of the commercial banks and savings and loan institutions that may issue letters of credit is scrutinized by several oversight organizations, including the Federal Reserve, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, and State banking commissioners. These regulatory bodies attempt to ensure that regulated institutions take actions necessary to avoid bankruptcies. EPA concluded that it would be duplicative to establish additional requirements to ensure the solvency of bank and savings and loan institutions issuing letters of credit.

3. *Validity of Letter of Credit Providing Liability Coverage.* To ensure that letters of credit may be used to provide liability coverage, EPA reviewed the status of legal doctrines that might call into question the authority of a bank to issue a letter of credit for liability coverage, and concluded that no significant legal obstacles currently exist to such use of letters of credit. EPA believes that the proposed use of letters of credit in today's rule is analogous to the use of a letter of credit in situations that courts have approved. The Agency, therefore, concluded that use of a letter of credit for financial assurance for third-party liability coverage is both valid and enforceable.

B. Surety Bond

Today's rule authorizes owners and operators of hazardous waste TSDFs to use surety bonds to satisfy the RCRA

[3] U.S. General Accounting Office, Staff Study, "Financial Services—Developments in the Financial Guarantee Industry," GAO/GGD-87-84, June 25, 1987, pp. 9-13, 17-18 discusses letters of credit as financial guarantees.

third-party liability requirements (40 CFR 264.147(a)(4), 264.147(b)(4), 265.147(a)(4), and 265.147(b)(4)). The adoption of surety bonds as an additional assurance mechanism for liability coverage was widely advocated by the commenters on the August 21, 1985, NPRM.

1. *Features of Mechanism.* Surety bonds represent agreements between three parties: The principal (i.e., the facility owner or operator); the obligee (i.e., third-party liability claimants) to whom the principal promises to complete a specific act; and the surety, who assures the obligee that the principal will fulfill its obligation and, if the principal fails, that the surety will fulfill the principal's obligation to the obligee. Thus, the surety bond authorized today guarantees that if the owner or operator fails to satisfy valid third-party claims, the surety will pay such claims. A surety company is entitled to reimbursement from the principal when it makes a payment under a bond.

There are two types of surety bonds: payment bonds and performance bonds. Payment bonds guarantee that the principal will pay a certain sum to identified parties under the conditions named in the bond, and if the principal fails to make the payment or payments, the surety will make the payment or payments. Performance bond guarantees that the principal will perform a certain act and, if the principal fails, that the surety will either perform the act for the principal or pay someone else to perform it. The surety bond provided in today's rule is a payment bond, because the obligation it guarantees is limited to the principal's payment of third-party liability claims to satisfy the Subtitle C liability requirements.

A surety company's liability under a payment bond is limited to the "penal sum," which is the amount of coverage guaranteed by the bond. The penal sum of the payment bond being authorized by today's rule has two parts, the per-occurrence limit and the annual aggregate limit (40 CFR 264.151(1)). If the payment bond covers claims resulting from both sudden accidental occurrences and nonsudden accidental occurrences, a separate penal sum will be identified for each type of coverage (i.e., such a bond would have four penal sums).

The payment bond authorized in today's rule will remain in effect unless and until the surety notifies the owner or operator and the Regional Administrator of proposed cancellation by certified mail. Cancellation will become effective 120 days from the receipt of notification (40 CFR 264.151(1), conditions clause (7)).

2. *Who May Provide Surety Bonds.* Today's rule requires that surety companies issuing payment bonds to assure liability coverage must be listed by the Department of Treasury in Treasury "Circular 570" as surety companies that may issue bonds to the Federal government (40 CFR 264.147(i)(2) and 265.147(i)(2)). This requirement parallels the closure and post-closure care financial assurance regulations and other financial assurance requirements involving surety bonds and assures that the surety company is subject to regulatory oversight by some government agency. To qualify for such a listing, surety companies must comply with the law and regulations of the Department of Treasury (as specified in sections 9304 and 9308 of Title 31 of the United States Code). The names of the companies meeting these Treasury requirements are published on July 1 of each year by the Department of the Treasury in "Circular 570; Surety Companies Acceptable on Federal Bonds."

3. *Validity of Surety Bond Providing Liability Coverage.* EPA has contacted several State insurance commissions to determine if States would view a surety bond for third-party liability coverage as subject to the State insurance laws. In a number of States, surety companies are already regulated by the State agency that is responsible for insurance. EPA found that in other States, the issue of whether the surety bond constitutes insurance may be examined on a case-by-case (i.e., facility-by-facility or bond-by-bond) basis. Many States may consider it necessary for the firm providing the surety bond to qualify under the State's surety or insurance laws as an insurer. To address this issue, the rule does not allow owners or operators to use a surety bond to demonstrate financial assurance unless the Attorneys General or Insurance Commissioners in the States in which the surety is incorporated and in which the facilities covered by the bond are located certify that the mechanism is valid and enforceable (40 CFR 264.147(i)(4) and 265.147(i)(4)). (See Section IV.C of this preamble for further discussion.)

C. Guarantee

Today's rule extends the use of guarantees for liability coverage to allow guarantees provided by firms that are not the direct parents of facility owners or operators (40 CFR 264.147(g)(1) and 265.147(g)(1)). The use of a parent corporate guarantee for liability coverage was authorized in an interim final rule on July 11, 1986 (51 FR 5350) and promulgated as a final regulation on November 18, 1987 (52 FR 44314). Under this rule, liability coverage may be provided by parent firms that directly own at least 50 percent of the voting stock of a subsidiary firm. Several commenters on the interim final rule urged EPA to allow non-parent firms to provide guarantees. After analyzing the validity and enforceability of guarantee contracts by non-parent firms, the Agency is authorizing guarantees provided by corporate grandparents and by a corporate "sibling" firm (a firm whose parent corporation is also the parent corporation of the owner or operator). The Agency also is allowing guarantees by other related and unrelated firms, provided that such firms have a substantial business relationship with the owner or operator.

The guarantee in today's rule incorporates the features of the November 18, 1987 rule for parent guarantees with minor revisions necessary to address non-parent guarantees and to ensure consistency with the other instruments allowed by today's rule. Since today's rule incorporates the features of this earlier rule, an extensive discussion of the guarantee has not been included in this preamble. Only the distinctive features of the non-parent corporate guarantee, the definition of who may provide the guarantee, and the basis upon which EPA concluded that it would be a valid and enforceable mechanism are discussed below.

1. *Features of Mechanism.* The authorized guarantee is an instrument by which a firm promises to pay the liability obligations of the owner or operator is the owner or operator does not do so. The firm providing the guarantee (the guarantor) must submit proof that it passes the financial test requirements of §§ 264.147(f)(1) or 265.147(f)(1). If the guarantor subsequently becomes unable to pass the financial test, the owner or operator must obtain another financial assurance mechanism for liability coverage.

2. *Who May Provide Guarantees.* Today's rule extends EPA's authorization of corporate guarantees beyond the previously allowed parent guarantee to include multi-tier guarantees by corporate grandparents, cross-stream guarantees by corporate siblings, and guarantees by firms with a "substantial business relationship" with the owner or operator. In general, today's rule authorizes three types of guarantees between corporations: (1) A guarantee by a parent corporation or

principal shareholder of a subsidiary (a "downstream" guarantee), (2) a guarantee by a sibling corporation (a "cross-stream" guarantee), and (3) a guarantee by a firm that has a "substantial business relationship" with the corporation that receives the guarantee (40 CFR 264.147(g)(1) and 265.147(g)(1)).

A simple single-tier downstream guarantee is one where the direct parent corporation guarantees the obligation of its subsidiary. A multi-tier downstream guarantee (consisting of three tiers of ownership, for example) is a guarantee by which the corporate grandparent or great grandparent (i.e., the ultimate owner of the subsidiary) provides a guarantee for the subsidiary. A cross-stream guarantee is a guarantee between sibling corporations, e.g., a "brother" subsidiary's guarantee of a "sister" subsidiary where the siblings are owned by the same parent. Both of these categories of guarantees have been tested in legal actions and are considered strong and binding legal obligations although analyses of guarantees between siblings typically assume that some economic relationship exists between the two corporations aside from the guarantee.

If the guarantee is being provided by a corporate grandparent or sibling, the guarantor must provide the guarantee to the owner or operator directly, irrespective of the number of intervening levels of ownership that exist in the corporate structure (40 CFR 264.147(g)(1) and 265.147(g)(1)). For example, a corporate grandparent would provide a guarantee for the owner or operator's firm directly, not through the corporate parent.

Today's rule also authorizes unrelated firms and other related firms, aside from parents and siblings, that have a "substantial business relationship" with the owner or operator of a hazardous waste facility to provide guarantees (40 CFR 264.147(g) and 265.147(g)). In authorizing guarantees by these other related and unrelated firms, EPA sought to ensure that a valid and enforceable contract was created. To this end, the Agency is requiring these firms to demonstrate a substantial business relationship with the owner or operator to ensure that the guarantee is a valid contract. Under fundamental principles of contract law, contracts must be supported by "consideration." Consideration is generally defined as a legal detriment that has been bargained for and exchanged for the promise. The general principle underlying the concept of consideration is that the law will not enforce gratuitous promises.

The issue of consideration arises in the context of all guarantees; however, parent and sibling firms authorized to issue guarantees under today's rule can demonstrate consideration by the inherent benefits or detriments that accrue to the guarantor firm by virtue of its corporate relationship with the owner or operator. As noted above, courts have generally recognized that guarantees offered by a parent or sibling corporation are valid and enforceable. EPA believes that other related and unrelated firms should be able to demonstrate sufficient consideration for the contract if they have a substantial business relationship with the owner or operator.

The Agency's review of legal literature indicated that a sufficiently close business relationship between two firms could be comparable to the shared economic interests that typify the relationship between corporate siblings and between a parent and its subsidiary. Because it is these mutual economic interests that underlie the validity and enforceability of downstream and cross-stream guarantees, the existence of such interests between other types of firms should enable guarantees between these firms also to be valid and enforceable. No single legal definition exists of what constitutes a business relationship between two firms that would justify upholding a guarantee between them. Furthermore, such a determination would depend upon the application of the laws of the States of the involved parties. Thus, in defining the underlying business relationship that produces an acceptable guarantee, the Agency provides a broad framework for analyzing business relationships while acknowledging the primary role of State law.

In today's rule, EPA is defining substantial business relationship to mean "the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A 'substantial business relationship' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator" (40 CFR 264.141(h)). A guarantee contract, by itself, would be inadequate to demonstrate a substantial business relationship between two parties. However, an existing contract to supply goods or services, separate from the guarantee contract, could supply evidence of such a relationship. An example of such an arrangement might be a contract for hazardous waste disposal between a generator and a disposal facility. Evidence demonstrating such a substantial business relationship is required to be provided in the letter from the Chief Financial Officer of the guarantor.

In addition to demonstrating the existence of a substantial business relationship, these other related and unrelated guarantors must describe the value that they received in consideration for the guarantee contract. In some cases, preexisting business relationships, no matter how substantial, will be insufficient by themselves to demonstrate consideration because they will not have been bargained for to induce the promise in the guarantee contract. For this reason, these guarantors must also describe the consideration for the contract in the letter from their Chief Financial Officer.

EPA considered as a preliminary matter whether corporate guarantees would be regulated as insurance contracts under States' insurance laws. EPA was concerned that guarantors could subject themselves to States' insurance laws through the issuance of guarantees. This issue has arisen in other of the Agency's financial responsibility rulemakings, including the proposed financial responsibility requirements for underground storage tanks containing petroleum (52 FR 12786, April 17, 1987). A discussion of the applicability of State insurance laws to various mechanisms, including corporate guarantees, is contained in the docket for that rulemaking, in the "Supporting Document for Proposed Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements." That discussion indicates that States' insurance statutes and regulatory bodies have varying ways of describing their jurisdiction over guarantees, oftentimes dependent on the precise circumstances surrounding the transaction. Thus, the Agency cannot state with any certainty whether any particular guarantee would subject the guarantor to a State's insurance laws. Therefore, the responsibility rests on owners and operators to obtain guarantees that are valid and enforceable and on prospective guarantors to ascertain and comply with the State laws they would subject themselves to if they were to provide guarantees. As discussed in Section IV.C of today's preamble, the first responsibility cited is accomplished

by requiring a certification from the Attorney General or Insurance Commissioner of the State in which the guarantor is incorporated and of each State in which a facility covered by the guarantee is located.

3. *Validity of Non-Parent Guarantee Providing Liability Coverage.* Some commenters questioned whether non-parent guarantees would provide assurance equivalent to that provided by a parent guarantee. The Agency concluded that adequate assurance will be provided by these "intercorporate" guarantees. Intercorporate guarantees are a common means of assuring a lender that its loan will be repaid. In particular, "cross-stream" guarantees, which are from a "brother" subsidiary to a "sister" subsidiary where both firms are owned by the same corporate parent, are a typical business practice. Normally, collection of funds assured by intercorporate guarantees is a comparatively simple matter of contract enforcement.

In unusual circumstances, such as the situation where the guarantor declares bankruptcy, efforts could be made to avoid the guaranteed obligation. Certain provisions of the Federal bankruptcy code (11 U.S.C.A. 544(b) and 548(a)(2)) allow avoidance of obligations that deplete the debtor's assets to the detriment of its creditors. If, while the guarantor was involved in bankruptcy proceedings, a liability claim was presented to it for payment, a question could arise over whether bankruptcy laws would enable it to avoid satisfying the claim because the payment would deplete its assets to the detriment of its creditors. Under section 548(a)(2) of the Federal bankruptcy code, a trustee in bankruptcy may avoid payments made to any party within a year before the debtor filed bankruptcy if (1) the debtor was insolvent at that time and (2) the debtor did not receive "reasonably equivalent value" in return for the transfer. Section 544(b) essentially enables similar actions to be pursued under applicable State laws.

Intercorporate guarantees, however, should not be vulnerable to such actions if the owner or operator receives reasonably equivalent value in return for the guarantee. In effect, this reasonably equivalent value serves as consideration supporting the guarantee contract, similar to the guarantor having a "substantial business relationship" with the owner or operator. According to most authorities, there is no difficulty in finding reasonably equivalent value in downstream guarantees, where the guarantor is higher in the corporate hierarchy (e.g., a direct or higher-tier parent) than the subsidiary receiving the guarantee. The subsidiary relationship of a firm to its direct or higher-tier parent is almost always considered a benefit to that parent. In cross-stream guarantees from one subsidiary of a parent to another subsidiary of that same parent, demonstrating reasonably equivalent value is more difficult because the subsidiary to which the guarantee is given is not an asset of the other subsidiary serving as the guarantor. In order to obviate any question about reasonably equivalent value in cross-stream guarantees, therefore, the Agency is requiring a cross-stream guarantor to describe in the Chief Financial Officer's Letter (§ 264.151(g)) the value of the consideration that accrued to it from the guarantee.

The Agency has also concluded that adequate assurance that obligations will not be avoided in the event of bankruptcy will be provided by guarantees made by other related firms (i.e., not corporate siblings or parents) and unrelated firms which demonstrate a substantial business relationship with the owner or operator. As with intercorporate guarantees, collection of funds in most cases will merely be a matter of contract enforcement. In the event of bankruptcy of the guarantor, however, it is particularly important that the guarantee be written so as to demonstrate clearly that the guarantor has received reasonably equivalent value in consideration for the guarantee. As discussed above, the Agency is requiring these guarantors to describe in the Chief Financial Officer's Letter (§ 264.151(g)) both the nature of the substantial business relationship and the value derived from the guarantee.

D. Trust Fund

Today's rule authorizes owners or operators of hazardous waste facilities to use trust funds to demonstrate financial responsibility for third-party liability coverage (40 CFR 264.147(a)(5), 264.147(b)(5), 265.147(a)(5), and 265.147(b)(5)), if assets sufficient to cover the full amount of the assurance to be provided by the trust fund are placed in the fund before it becomes effective (i.e., the trust must be fully funded "up-front") (40 CFR 264.147(j)(3) and 265.147(j)(3)). Several comments received on the August 21, 1985 NPRM supported the use of trust funds to demonstrate financial responsibility for third-party liability coverage.

1. *Features of Mechanism.* A trust fund is an arrangement in which a separate legal entity, the trust, is created to hold property or funds for the benefit of another. At least three parties are necessary under trust agreements: the grantor, who establishes and funds the trust; the trustee, who has a fiduciary responsibility over the property placed in the trust by the grantor; and the beneficiary, the person (or group of people) for whom the arrangement is made. The most significant feature of a trust fund is the shift of legal ownership of the property in the trust from the grantor to the trustee when the trust is established and funded.

The trust document or trust agreement determines the allocation of rights, duties, and responsibilities among the parties to any trust. The trustee, in return for a fee, has a fiduciary responsibility to manage the fund according to the rules specified in the agreement. This agreement also defines the limits of a trustee's liability. In addition, a trust agreement states the manner in which payments are made into and out of the trust, as well as the grounds upon which the trust can be terminated.

2. *Validity of Trust Fund for Liability Coverage.* A trust used as a financial assurance mechanism should have a fund balance equal to the amount of coverage being demonstrated. The trust agreement may allow a pay-in period during which the grantor makes payments of specified amounts into the trust until the trust is fully funded. The length of the pay-in period typically is designed such that the trust fund balance equals the required amount of coverage before funds are needed for the assured activity. Because liability coverage may be needed immediately, the trust in today's rule must be fully paid up at the time it is relied upon for financial assurance. The trust also may not be cancelled unless and until an alternate financial assurance mechanism is in place. A fully funded trust provides a high degree of assurance because funds, up to the required amount of coverage, are set aside specifically for the purpose of liability coverage.

To ensure that the full amount of coverage is available each year in which owner or operator must provide financial assurance, the Agency is requiring both that the trust fund be fully funded immediately and, in addition, if a liability claim is paid out of the trust fund balance, the owner or operator is required to refinance the trust annually up to the amount of the required coverage on or before the anniversary date of the establishment of the fund to satisfy the annual aggregate requirement of §§ 264.147 and 265.147.

Although some owners and operators may conclude that the cost of funding a

trust as the sole financial assurance mechanism is prohibitive, they may find it desirable to use a trust fund in combination with one or more other mechanisms. For example, owners and operators who purchase insurance policies that do not provide the full amount of aggregate coverage might use trust funds to demonstrate financial responsibility for the amounts of the aggregate not covered by the insurance policy.

E. Purchase of Insurance by Other Firms

Under the current liability requirements, proof of adequate insurance coverage can be provided by either a certificate of insurance or an endorsement. A certificate of insurance is a statement obtained from the insurer certifying that it has issued insurance as represented in the certificate. The certificate is not a part of the policy, but can be used to demonstrate the existence of the policy. An endorsement is a form attached to the policy that describes the original terms of the policy and any amendments to those terms. An endorsement is a part of the policy and also evidences that insurance has been issued as described in the endorsement.

The Agency is today making minor revisions to the insurance certificate and endorsement to clarify that other firms may purchase insurance on behalf of owners or operators and to ensure that EPA receives proper notice of actions affecting the policy, such as attempted cancellation, where the policy has been purchased by another firm. These changes are reflected in paragraphs 2(d) of the "Hazardous Waste Facility Liability Endorsement" and of the "Hazardous Waste Facility Certificate of Liability Insurance" in §§ 264.151(i) and 264.151(j), respectively.

Currently, 40 CFR 264.147(a) and 265.147(a) require that an owner or operator must "have and maintain" coverage for bodily injury and property damage to third parties resulting from operation of a hazardous waste management facility. These regulations do not state explicitly that a party other than the owner or operator may purchase or obtain the necessary insurance coverage on behalf of the owner or operator. To clarify in the regulations that such insurance may be purchased by a third party, however, requires only that the language of the notice of cancellation provision in these insurance policies be amended.

To ensure that the cancellation provision in the Endorsement and Certificate covers a situation in which another company has purchased a policy for the owner or operator, the Agency has modified the language of the cancellation provision of both the Certificate and Endorsement to state explicitly that another firm providing insurance for an owner or operator must notify the Regional Administrator and the owner or operator by certified mail 60 days before insurance is cancelled (40 CFR 264.151(i)(2)(d) and 264.151(j)(2)(d)). In addition, the revised cancellation provision also states that another firm providing insurance for an owner or operator must notify EPA in writing (1) whenever claims are made against the firm or the owner or operator for third-party damages and (2) before any changes are made in the policy. The Agency is concerned that reductions in the level of coverage available to the owner or operator, due to claims made against the firm providing the insurance or changes in the insurance policy by the firm providing the insurance, otherwise may not be reported to EPA.

F. Allowable Combinations of Mechanisms

The Agency will allow an owner or operator to demonstrate the required liability coverage through the use of combinations of financial assurance mechanisms (40 CFR 264.147(a)(6), 264.147(b)(6), 265.147(a)(6), and 265.147(b)(6)). Owners or operators may use any combination of insurance, the financial test, the corporate guarantee, a letter of credit, a surety bond, and a trust fund. In allowing combinations of instruments, EPA is extending the general approach of Subtitle C liability coverage requirements. An owner or operator can use its own financial strength to cover some costs and another financial assurance mechanism to cover the remainder, provided that in combining the mechanism assets are not double-counted. To prevent double-counting, combinations of the corporate guarantee and financial test are allowed only if the financial statement of the guarantor and the owner or operator are not consolidated (40 CFR 264.147(a)(6), 264.147(b)(6), 265.147(a)(6), and 265.147(b)(6)). In a consolidated financial statement, the assets and liabilities of a subsidiary are included in the parent company's financial statement. If the financial statements of the guarantor were consolidated with the statement of the owner or operator, the owner or operator could count its own assets once for the financial test and they could be counted again in the corporate financial statement which is used to support the corporate guarantee. Such double-counting of assets would negate the value of the financial test by overestimating the assets of the guarantor.

Today's rule includes a provision requiring owners and operators to specify which of several combined instruments should be drawn upon first in the event of a claim by designating instruments as "primary" or "excess" coverage. Under closure and post-closure care financial assurance rules, priorities may be established by the Regional Administrator either by selecting one instrument and drawing upon it, or by drawing upon all instruments simultaneously and then drawing funds from the standby trust without regard to their source (see 40 CFR 264.143, 264.145, 265.143, and 265.145). The Agency considered giving the Regional Administrator similar authority in today's rule. However, the Agency is seeking in this rule to minimize the role of the Regional Administrator in payment of claims. Consequently, under today's rule the Regional Administrator does not establish the order in which financial assurance mechanisms are drawn upon in cases when owners or operators use more than one mechanism to satisfy the liability coverage requirements.

The Agency also considered the option of establishing standardized priorities for drawing upon mechanisms. This option was not adopted, however, because the Agency believes that priorities can better be established on a case-by-case basis.

While rejecting these two approaches, EPA believes that establishing priorities is necessary to avoid delays in the payment of claims and to define clearly the extent of coverage. For example, priority arrangements are often specified when insurance is combined with another mechanism. Insurers typically include language within policies limiting their obligations in the event that other coverage exists and preventing the "stacking" of policies except in the case of designated "primary" and "excess" coverage. Such language generally specifies that the coverage provided is "primary" (meaning that it is to be drawn upon first) and that if other coverage exists, payment of claims will be shared, or that payment will be made after the other coverage is exhausted up to the liability limits of the policy.

Today's rule requires an owner or operator to specify which of several mechanisms that are being used in combination to satisfy the coverage requirements should be drawn upon first in the event of a claim. The actual determination of priority is, however, left with the owner or operator and may involve negotiation with the providers of the assurance mechanism.

To facilitate the establishment of priorities, the financial assurance instruments adopted in today's rule include language specifying whether the coverage is primary or excess. In addition, the guarantee under § 264.151(h)(2) has been amended to indicate whether it provides primary or excess coverage.

IV. Special Provisions of Additional Mechanisms

This section discusses several special provisions that are common to several of the additional mechanisms for liability coverage authorized by today's rule, and that differ from requirements for closure and post-closure financial assurance.

A. Beneficiaries

In contrast to the mechanisms authorized or proposed under Subtitle C for closure and post-closure care and corrective action, the liability coverage mechanisms authorized today do not name EPA as their beneficiary. In today's rule, the issuer of the mechanism assumes the obligation to satisfy third-party liability claims for personal injury or property damage arising from operation of the facilities covered by the mechanism if the owner or operator does not do so.

Third parties, and not EPA, are designated beneficiaries to ensure that the third parties are paid directly for liability claims without involvement by EPA. The issuer of the mechanism must honor all valid certified claims or judgments upon the mechanism up to the limit of the amount covered.

B. Payment Trigger

To ensure that only valid claims are paid, the mechanisms specify that before making payment the issuer must receive either (a) a certificate of valid claim signed by the third-party claimants and by the owner or operator, or (b) a final court judgment. This provision allows for the resolution of third-party claims without the involvement in the dispute of either the issuer of the mechanism or EPA. Each of the mechanisms authorized today contains a provision that incorporates the payment trigger requirements, including the "certificate of valid claim" (40 CFR 264.151(h)(2), section 13; 264.151(k), clause 2; 264.151(1), condition (4); and 264.151(m), section (4)).

The purpose of this payment trigger is to avoid placing either the provider of the mechanism or the Regional Administrator in the position of deciding the merits of disputes between the owner or operator and the third-party claimant. The payment trigger is also set up so that claims do not have to be litigated for a final judgment. The certification is designed to allow an owner or operator to settle a claim with a third party without conceding liability in a document accessible by the public, which could be used against the owner or operator in future claims.

The requirement to submit the signed and notarized certification assures that the parties have either agreed that the claim is valid and in the correct amount or they have settled any disputes related to the validity or amount of the claim before coming to the provider for payment. The procedure is designed to reduce administrative burdens and to allow efficient payment of valid claims. The Agency does not expect the requirement to submit a signed and notarized certification of claim to place undue burdens on owners or operators or third-party claimants.

Alternatively, if the owner or operator and the third-party claimant cannot agree on the validity and amount of the claim, a final judgment by a court must be submitted by the third-party claimant, indicating that the claim should be paid. Whether payment of a judgment shall be made is a matter of applicable State law and shall be determined by the laws of the jurisdiction in which the action was brought.

Unlike the requirements for closure and post-closure care and corrective action, EPA is not requiring the establishment of a standby trust for mechanisms issued for liability coverage. A standby trust is necessary when funds are payable to EPA, because by law monies paid to the Federal government must be deposited in the United States Treasury. Because the mechanisms will pay third parties directly, a standby trust is not necessary for liability coverage.

C. Certification of Validity and Enforceability

The surety bond and guarantee authorized in today's rule may be subject to the insurance laws and regulations of certain States. To ensure that these instruments are valid and enforceable, EPA has contacted several State insurance commissions to ask how they would view these mechanisms for liability coverage. The results of those contacts are described in the docket for this rulemaking.

Most of the State commissions contacted said they would probably require a firm providing a surety bond to qualify as an insurer under State insurance laws unless the firm was related to the owner or operator in a corporate structure or it was providing the bond incident to its business relationship with the owner or operator. Two factors may influence the State's determination: whether a premium is charged and whether the firm would make such bonds available to the general public. To be certain that any bonds used as financial assurance mechanisms will be valid and enforceable, the Agency will not approve a surety bond for liability coverage unless the Attorneys General or Insurance Commissioners of the State in which the surety is incorporated, and of each State in which a facility covered by the bond is located, submits a written statement that a surety bond written and executed as required is a legally valid and enforceable obligation (40 CFR 264.147(i)(4) and 265.147(i)(4)). The certification by each State is required only once, and need not be obtained on a case-by-case basis by the owner or operator; instead it is provided to EPA or to a State agency. Accepting certifications provided to a State agency may be necessary in some circumstances even if EPA is administering the financial assurance requirements, because in many States officials such as the Attorney General will not issue opinions except to State agencies.

Guarantees for liability coverage also may come within the jurisdiction of a State's insurance laws and regulations. Accordingly, EPA is requiring that the guarantee may be used to fulfill liability coverage requirements only if the Attorney General or Insurance Commissioner of the State in which the guarantor is incorporated, and of each State in which a facility covered by the guarantee is located, submits a written statement that a guarantee written and executed as required is a legally valid and enforceable obligation (40 CFR 264.147(g)(2) and 265.147(g)(2)). The corporate guarantee rule provides a parallel requirement for this guarantee. To date, EPA has received evidence from 28 States that the parent guarantee would be acceptable.

D. Cancellation

Today's rule includes cancellation procedures for the authorized mechanisms. These procedures vary somewhat depending on the instrument. For the surety bond and guarantee provided by an unrelated firm, cancellation is allowed 120 days following notification by certified mail to the owner or operator and to the Regional Administrator(s) of the Region(s) in which the affected facilities are located (40 CFR 264.151(h)(2) and 264.151(1)). The Agency believes that

120 days is sufficient time for an owner or operator to locate a new financial assurance mechanism, and that any more stringent requirement, such as one requiring an in-place alternative prior to cancellation, would limit the availability of these mechanisms and would require extensive involvement of the Agency in the claims process.

The cancellation provisions for guarantees provided by some guarantors related to the owner or operator (i.e., corporate parents, siblings, or grand parents) require the guarantor to continue to provide the guarantee until an alternate mechanism is in place (40 CFR 264.151(h)(2)). This more stringent requirement is currently required for the corporate parent guarantee and is today being extended to guarantees provided by some of the other firms that are related to the owner or operator.

The distinctions in the cancellation provisions are based on the nature of the relationship between the provider of assurance and the owner or operator. EPA believes that a corporate parent or some of the other related corporations, due to their close relationship with the owner or operator, will have a continuing interest in the financial condition of the owner or operator and therefore should bear more responsibility for continued financial assurance than a less related or completely unrelated firm. When guarantees are provided by guarantors closely related to the owner or operator, permitting cancellation only when an alternative has been approved ensures that coverage for liability costs will be continuously available. Similarly, because the owner or operator provides a trust fund directly, it is not allowed to cancel that mechanism until another form of financial assurance has become effective. EPA is not promulgating a similarly stringent cancellation requirement for providers of insurance, surety bonds, or guarantees by less related and unrelated firms, because it believes that third-party providers would not provide coverage if they were unable to cancel that coverage, with reasonable notice, at some later date.

Today's rule does not amend the current provisions (40 CFR 264.151 (i) and (j)) allowing an insurer to cancel an insurance policy 60 days after the notice of cancellation is received by the Regional Administrator. Insurance providers argued that not allowing cancellation until at least 120 days after notice is given exposes them to considerable risk when the insured fails to pay the premium for the final period of coverage. In consideration of this concern, the Agency is maintaining the current 60-day requirement for insurance policies.

E. Exclusions

The mechanisms in today's rule contain a provision that they do not apply to certain categories of damages or obligations (see 40 CFR 264.151(h)(2), paragraph (4); 264.151(k); 264.151(l), conditions clause (l); and 264.151(m), section 3). These exclusions are patterned on existing standard exclusions found in insurance coverage (see, for example, the Insurance Services Office pollution liability coverage form CG 00 39 11 85). They are intended to ensure that the coverage is not exhausted by the payment of claims that are covered by other compensation systems or that are otherwise not intended to be included within the scope of coverage.

The Agency did not adopt all the standard Commercial General Liability (CGL) and Environmental Impairment Liability (EIL) exclusions, but included only those exclusions it considered relevant to the financial assurance mechanisms for liability. EPA has also recently issued guidance on the acceptability of site-specific pollution exclusion within insurance policies. This guidance memorandum is applicable only to insurance policies.

Exclusion (a), for bodily injury or property damage for which the owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement, is intended to exclude liabilities assumed by contract that do not involve the hazardous waste treatment, storage, and disposal facility or facilities of the owner or operator. It does not exclude settlements or other agreements to pay damages in connection with accidental occurrences resulting in bodily injury or property damage caused by hazardous waste.

Exclusion (b), for obligations under workers' compensation, disability benefits, or unemployment compensation law or similar law, is intended to ensure that liability coverage is available for non-employee third parties and does not duplicate coverage provided under these other programs or forms of assurance.

Exclusion (c), for bodily injury to the employees, or the immediate family of employees, of the owner or operator, is also intended to ensure that coverage is available for "third parties" and does not duplicate coverage provided under other forms of assurance.

Exclusion (d), for bodily injury or property damage arising out of the ownership or use of any aircraft, motor vehicle, or watercraft, is to prevent use of an authorized financial assurance mechanism for routine accidents that are not directly related to management of hazardous waste.

Exclusion (e), for property damage to property owned, occupied, rented, or in the care, custody, or control of the owner or operator, is intended to ensure that coverage will be available to compensate third parties, and not the owner or operator, for property damage as a result of activities at TSDFs.

V. Other Issues Presented in the Notice of Proposed Rulemaking

In the August 21, 1985, NPRM, EPA suggested several additional approaches that could be taken to promote compliance with the financial responsibility requirements. Alternatives, other than authorizing additional financial assurance mechanisms, included the suspension or withdrawal of the liability coverage requirements, clarification of the scope of coverage, revision of the required levels of coverage, or authorization of waivers. Numerous comments were received on these alternatives. After considering these comments, the Agency has decided to retain the liability coverage requirements at their present levels, to maintain the present scope of coverage, and to reject the option of generic waivers. This section discusses briefly the comments received on these alternatives in response to the NPRM and explains the reasons why EPA is not adopting them. A more complete discussion of these comments is included within the docket accompanying today's rule.

A. Maintain, Suspend, or Withdraw Existing Liability Coverage Requirements

The Agency received comments from State governments and the public that generally argued in favor of maintaining the requirements. Supporters of the existing requirements argued that the insurance market for EIL coverage would not recover without such requirements; that maintaining the requirement would increase public confidence in hazardous waste facilities and decrease opposition to siting and permitting such facilities; and that low-risk owners and operators were able to obtain coverage. Commenters from State and local governments in particular argued that suspension or withdrawal of the liability coverage requirements would severely damage the chances for an eventual solution to the problem of insurance availability, that suspension would not be acceptable to the public and would undermine the strength of programs to regulate hazardous waste

management, and that liability coverage is necessary to protect human health and environment. Facilities that are unable to obtain such coverage, in these commenters' opinion should not continue in operation.

In contrast, a number of firms in the regulated community argued that EPA should not maintain the existing liability coverage requirements, but rather should suspend or withdraw the requirements, because of the difficulty many firms faced in obtaining insurance. Commenters also argued that the liability coverage requirements could be suspended or withdrawn because they were redundant with permitting conditions and that EPA should concentrate on achieving risk control rather than post-loss compensation. They also pointed out that even if the liability coverage requirements were abolished, third parties harmed by hazardous waste management activities could still sue the owner or operator for damages. Finally, commenters argued that the constraints on insurance availability made a short-term suspension necessary, even if the requirements for liability coverage were later reinstituted.

After considering these comments and suggestions made in response to other questions in the NPRM, EPA has concluded that the current liability coverage requirements should be maintained. The Agency believes that the requirements are an important component of the RCRA management system and are necessary to protect human health and the environment. Further, Congress in the Hazardous and Solid Waste Amendments of 1984 (HSWA) has stressed the importance of satisfying all financial assurance requirements, including liability coverage. Finally, by authorizing the use of additional financial mechanisms for liability coverage, the Agency believes that the problems of insurance availability cited by some commenters as reasons to suspend or withdraw the rule should become less important in the future.

B. Revise Scope and Levels of Coverage

A number of issues were considered by EPA in connection with the scope and levels of coverage. They included coverage levels, distinction between sudden and nonsudden coverage, exclusion of legal defense costs, and deductibles. Each is discussed in this section.

1. *Coverage Levels.* EPA established the sudden accidental and nonsudden accidental liability coverage requirements in 1982 at $1 million per occurrence and $3 million per occurrence, respectively, on the basis of the Agency's investigation of existing third-party damage cases. To account for the possibility that the same firm might experience more than one claim in a year, the Agency also established annual aggregate coverage requirements at twice those amounts, or $2 million and $6 million, respectively.

In July 1986, EPA again reviewed third-party damage claims, awards, and settlements for sudden and nonsudden accidental occurrences involving hazardous chemicals as well as hazardous waste to determine whether the required levels of coverage are adequate. Data were limited, however, for several reasons, including the fact that few cases have been litigated to completion. Thus, available data were generally data on amounts claimed, rather than amounts recovered in awards or settlements. Because final awards and settlements often differ significantly from initial claims, it is difficult to draw conclusions based on this data. In addition, commenters did not supply any additional information indicating that the currently required coverage levels should be changed. The Agency concluded, in light of the limited data, that it had insufficient basis to change the requirements at this time.

2. *Distinction Between Sudden and Nonsudden Coverage.* 40 CFR 264.147(a) and 265.147(a) require all owners or operators of hazardous waste facilities to have "sudden accidental" coverage. Owners and operators of surface impoundments, landfills, or land treatment facilities used to manage hazardous wastes also are required to have "nonsudden accidental" coverage (40 CFR 264.147(b) and 265.147(b)).

A number of commenters on the August 21, 1985, NPRM suggested that the Agency no longer distinguish between sudden and nonsudden accidental coverage. They argued that nonsudden coverage was difficult to obtain, and that insurers were beginning to issue combined policies for sudden and nonsudden coverage. (A more complete discussion of comments on this point is provided in documents accompanying today's rulemaking.)

EPA has decided to maintain the distinction between sudden and nonsudden coverage. The Agency believes that maintaining distinct coverage requirements is still appropriate. Further, the insurance industry continues to write policies that distinguish between sudden and nonsudden events. EPA recognizes, however, that in some cases, courts have interpreted coverage for sudden events broadly to include damage from a gradual release occurring over long periods of time. As a result, some insurers do not distinguish between sudden and nonsudden events, but offer "combined coverage": coverage for both sudden and nonsudden events on the same policy with single aggregate and per-occurrence limits. Today's rule includes a change to the coverage requirements citation specifying that the Agency will accept "combined coverage" policies, but to provide equivalent levels of coverage, the limits must be at least $4 million per-occurrence ($1 million sudden plus $3 million nonsudden) and $8 million annual aggregate ($2 million sudden plus $6 million nonsudden).

3. *Exclusion of Legal Defense Costs from Policy Limits.* Currently, Subpart H requires an owner or operator of a TSDF to maintain liability coverage for sudden and nonsudden accidental occurrences at specified levels, exclusive of legal defense costs (40 CFR 264.147 (a) and (b) and 265.147 (a) and (b)). The Agency decided to exclude legal defense costs for two reasons: (1) The insurance industry standard for CGL policies excluded legal defense costs from the coverage, and (2) legal defense costs could absorb a major portion of the required coverage, leaving an inadequate amount to cover actual damages. The Agency continues to believe that these reasons remain valid and do not affect the availability of insurance.

In its August 21, 1985 NPRM the Agency requested comment on whether, in an effort to increase the availability of EIL coverage for TSDFs, legal defense costs should be included in coverage limits. A number of commenters supported including legal defense costs. They argued that the EIL coverage currently available to TSDFs is written to include defense costs within policy limits. The Agency contacted insurance companies known to provide EIL coverage to ask whether their EIL policies included or excluded legal defense costs. Although some companies stated that defense costs are included in the coverage limits, others said that defense costs were excluded, or that the policy could be written to conform to the RCRA requirements; that is, policies could be written to exclude legal defense costs. Furthermore, current industry practice, including the present industry standard form for this type of insurance, still excludes defense costs from the coverage limits. In addition, while recently there have been attempts by insurers to limit defense cost exposure by including at least some defense costs within policy limits, the trend appears to be toward some other

method of limiting costs outside of policy limits.

The second reason commenters presented for changing the RCRA requirements to include legal defense costs was that the assurance of the availability of defense costs is an important element of claims litigation and further that there were insufficient RCRA claims data to warrant requiring coverage excluding legal defense costs.

The Agency continues to believe that it is important for the full amount of liability coverage to be available to cover claims against owners or operators of TSDFs. The Agency decided on the current coverage levels after a thorough investigation of reported third-party damage cases from hazardous waste accidents and these levels do not account for legal defense costs. Because the size of legal defense costs in this area is somewhat uncertain, the most secure method of ensuring that sufficient funds will be available to cover actual damages is to retain the requirement that defense costs be excluded.

Other commenters stated that including legal defense costs should be permissible, as long as the full amount of RCRA liability coverage was available to claimants. EPA agrees. If the total coverage includes the full amount required for third-party liability plus additional coverage earmarked for legal defense costs, the policy would be acceptable under current regulations. Thus, for example, a policy would provide acceptable assurance for a surface impoundment if the total coverage was $5 million per occurrence and $10 million annual aggregate if legal defense costs covered under the policy were limited to a maximum of $1 million per occurrence and $2 million annual aggregate. A $5 million per occurrence, $8 million annual aggregate policy without an earmarked limit on legal defense costs would not provide adequate assurance.

4. *Deductibles.* A number of commenters argued that EPA should not require "first-dollar" coverage for liability costs. If deductibles were allowed, according to these commenters, insurance coverage might be easier to obtain or be less costly.

Although the insurer must provide first-dollar coverage, EPA notes that the regulations do not prevent insurers from requiring reimbursement from owners or operators for first-dollar expenditures. The owner or operator can agree in the insurance contract that the insurer will be reimbursed for these expenditures. The regulations do not, however, allow self-insurance retention. Policies cannot require the owner or operator to cover first-dollar expenditures. Such self-insurance is available to an owner or operator under the regulations only if it can pass the requirements established in the financial test for liability coverage.

EPA contacted a number of insurers to determine whether self-insurance retention could help to alleviate problems of insurance availability and affordability. In general, however, their responses indicated that current problems with EIL insurance are related to other factors, such as difficulty in predicting the size of the risk being covered, and that deductibles would not significantly enhance insurance availability. Therefore, the Agency is retaining the current first-dollar coverage requirement.

C. Mechanisms Considered But Not Adopted

1. *Security interests.* Security interests are a special procedure, authorized under State law following a pattern established by the Uniform Commercial Code, for creating collateral to serve as a support for the repayment of loans or other financial obligations. Security interests were considered but rejected for liability coverage because of the complicated legal requirements that have to be satisfied to ensure that they provide effective financial assurance. For example, security interests ordinarily must be perfected by filing papers with appropriate agencies in each jurisdiction where collateral exists, and these filings must be kept up to date. EPA would be required to verify that proper filings had occurred. In addition, the Agency would also have to determine that the collateral underlying the agreement had been valued properly. If not, the proceeds from sale of the collateral might fail to supply the amounts required to satisfy valid claims. Finally, the need to satisfy specific legal processes prior to liquidation of collateral could delay payment of valid third-party claims. Because of these problems, EPA has decided not to adopt security interests at this time.

2. *Indemnity contracts.* Indemnity contracts are legally binding commitments by a third party or "indemnitor" to pay a debt or obligation of another party. The duty of the indemnitor generally is to repay the primary debtor after it has satisfied the debt or obligation. The Agency was not willing to adopt such a mechanism because of the administrative difficulties and lengthy time needed to enforce such contracts.

An indemnity contract also may be established in which the indemnitor agrees to assume the obligation even if the primary debtor does not pay. Such a contract, however, so closely resembles a guarantee that EPA determined that in effect no additional financial assurance option would be added to the regulations by inclusion of the indemnity. Therefore the Agency has not added an indemnity contract to the set of options authorized in today's rule.

3. *Reserve funds.* As a temporary measure pending the growth of the insurance market, some commenters suggested that owners or operators set aside the equivalent of insurance premiums in a reserve fund. Such a mechanism could function in a manner similar to trusts, if control over the fund were given to an independent fiduciary agent. Alternatively, however, some commenters suggested that the reserve fund be only a separate bookkeeping entity under the control of the owner or operator. EPA believes that neither approach would ensure that the reserve would contain sufficient funds when required to satisfy claims. Liability coverage funds may be needed at any time after implementation of the mechanism. Because a reserve fund based on the estimated equivalent of insurance premiums, rather than the amounts equal to the required coverage levels, would accumulate slowly, it would be unlikely to contain adequate funds to satisfy liability claims, especially in the early years.

In addition, EPA is convinced that a reserve fund that is not under the control of an independent trustee but instead remains under the control of the TSDF owner or operator will not provide satisfactory financial assurance. No independent third party would administer the reserve fund, including assessing its value and controlling payments from the fund. The Agency determined, therefore, not to authorize the use of reserves. Today's rule authorizes a fully funded trust fund, for owners and operators who want to use a similar mechanism.

4. *Federal Insurance or Loan Guarantees.* Some commenters pointed to other financial assurance programs utilizing Federal insurance or loan guarantees as possible models for EPA. Establishment of insurance or loan guarantees requires specific statutory authority that has not been granted to the Agency. Further, EPA does not believe that as an agency whose primary mandate is protection of human health and the environment, it currently possesses the expertise or resources to administer either an insurance or a loan guarantee program. Such programs or approaches would require the Agency to assess financial characteristics of owners or operators, and to make

decisions concerning the validity of claims, when those assessments and decisions can be made more accurately and efficiently by existing institutions that provide financial assurance.

5. *Captive Insurance Pools and Risk Retention Groups.* EPA believes it is unnecessary in today's rulemaking explicitly to authorize the use of captive insurance pools and risk retention groups. Such instruments are already authorized as forms of insurance. If the policies offered by a pool or risk retention group satisfy EPA requirements, such policies provide acceptable financial assurance.

D. Authorize Waivers

A number of commenters, particularly those from industry, supported granting temporary waivers on a case-by-case basis if a firm can demonstrate that it has made a "good faith effort" to obtain the required liability insurance. However, the Agency believes that the authorization of additional mechanisms, existing enforcement policies, the somewhat improved insurance market for TSDFs and the increased potential of insurance offered by risk retention groups, provide a better solution than simply waiving the liability coverage requirements. Also, existing regulations enable Regional Administrators to grant variances (§§ 264.147(c) and 265.147(c)) or adjustments (§ 264.147(d) and 265.147(d)) to the required liability coverage amounts, if this is justified by the degree and duration of risk associated with a TSDF. The Agency believes that justifiable modifications in the amount of coverage needed are more consistent with the objectives of the liability coverage requirements than would be relieving owners or operators of these requirements entirely, solely because they made a "good faith" effort to obtain coverage.

VI. Consistency With Other Existing and Proposed Financial Assurance Requirements

EPA currently allows owners or operators of hazardous waste TSDFs to use the mechanisms being approved in today's rule, including trust funds, letters of credit, surety bonds, and corporate guarantee contracts, to provide financial assurance for the costs of closure and post-closure care (40 CFR 264.143, 264.145, 264.151, 265.143, and 265.145), and has proposed their use for corrective action (51 FR 37854, October 24, 1986). As described above, certain features of the assurance mechanisms are different because of the differences between these programs and liability coverage.

In addition, EPA has proposed financial assurance rules applicable to owners and operators of underground storage tanks (USTs) containing petroleum under sections 9003 (c) and (d) of RCRA as amended by HSWA (RCRA Subtitle I), and by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (52 FR 12662, April 17, 1987). The proposed rule would establish requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank containing petroleum. As in today's rule, under the UST proposal, owners and operators of underground storage tanks containing petroleum would be allowed to use letters of credit, surety bonds, and expanded guarantees to demonstrate financal responsibility for the costs of corrective action and third-party liability claims (52 FR 12786, 12844, April 17, 1987).

VII. Technical Correction to 40 CFR 264.151(b)

The May 2, 1986 rule amending the closure, post-closure care, and financial assurance regulations mistakenly omitted a portion of the required language for the financial guarantee bond found in 40 CFR 264.151(b) (see 51 FR 16422, 16450). Today's rule makes a technical correction to the regulation to restore the required wording of the bond.

VIII. Effective Date

This regulation is being published as a final rule, effective in 30 days.

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto generally take effect six months after their promulgations. The purpose of this requirement is to allow sufficient time for the regulated community to comply with major new regulatory requirements. The statute allows for a shorter period prior to the effective date, if (i) the Administrator finds that the regulated community does not need six months to come into compliance; (ii) the regulation responds to an emergency situation, or (iii) other good cause. The Agency believes that since the regulation does not add any compliance requirements, but rather expands the number of mechanisms owners or operators may use to come into compliance, a six-month period prior to the effective date is unnecessary.

Today's amendment adopts additional mechanisms for complying with third-part liability coverage requirements and thus makes it easier for some owners and operators to act in accordance with the RCRA liability coverage regulations. An effective date six months after promulgation for the amendment promulgated today would substantially delay the implementation of the regulations and would be contrary to the interest of the regulated community and the public. Accordingly, the Agency believes that it makes little sense to delay needed relief to owners or operators by an additional five months.

IX. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Rule on State Authorizations

Today's rule promulgates standards that will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA.

Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires that States that have final authorization to modify their programs to reflect Federal program changes and subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (see 40 CFR 271.1(i)). The standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States will not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above. If the State does modify its program, EPA must approve the modification for the State requirements to become Subtitle C RCRA requirements. States should follow the deadlines of 40 CFR 271.21(e)(2) if they desire to adopt this less stringent requirement.

X. Executive Order 12291

Under Executive Order 12291 (section 3(b)) the Agency must judge whether a regulation is major and thus subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Exective Order No. 12291.

XI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). This rule relaxes the existing financial assurance requirements and thus reduces costs associated with compliance. Accordingly, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

XII. Supporting Documents

Supporting documents available for this interim final rule include comments on the August 21, 1985 Proposed Rule, summary of the comments on the July 11, 1986 Interim Final Rule, and background documents on the finanical test for liability coverage. In addition, background documents prepared for previous financial assurance regulations, as well as documents prepared for this rulemaking, are also available as are letters received from State Attorneys General concerning the corporate guarantee for liability.

All of these supporting materials are available for review in the EPA public docket (RCRA docket #F–88–CGF1–FFFFF), Room S–212, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds.

Date: August 19, 1988.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as set forth below.

40 CFR Part 264 is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.141, new paragraph (h) is added to read as follows:

§ 264.141 Definitions of terms as used in this subpart.

* * * * *

(h) "Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

3. In § 264.147, paragraph (h) is redesignated as paragraph (k); paragraphs (a) introductory text, (a)(2), (a)(3), (b) introductory text, (b)(2), (b)(3), (b)(4), (g) heading and (g)(1) introductory text are revised, and by removing and reserving paragraph (g)(1)(ii); paragraphs (g)(2)(i) and (g)(2)(ii) are amended by removing "corporate;" and new paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (b)(5), (b)(6), (b)(7), (h), (i), and (j) are added, to read as follows:

§ 264.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

* * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraphs (b) (1), (2), (3), (4), (5), or (6), of this section:

* * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amount required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

* * * * *

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in § 264.151(h)(2) of this part. A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

* * * * *

(h) *Letter of credit for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter or credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Regional Administrator.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit must be identical to the wording specified in § 264.151(k) of this part.

(i) *Surety bond for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Regional Administrator.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in § 264.151(1) of this part.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (i) the State in which the surety is incorporated, and (ii) each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in this section and § 264.151(1) of this part is a legally valid and enforceable obligation in that State.

(j) *Trust fund for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in § 264.151(m) of this part.

§ 264.151 [Amended]

4. In § 264.151 paragraph (b) is amended by adding the following text to the end of the "Financial Guarantee Bond" to read as follows:

(b) * * *

Financial Guarantee Bond

* * * * *

Or, if the Principal shall provide alternate financial assurance, as specified in Subpart H of 40 CFR Part 264 or 265, as applicable, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

Corporate Surety(ies)

[Name and address]

State of incorporation:] _____

Liability limit: $ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

5. In § 264.151, paragraph (g) is revised to read as follows:

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265: _____.

The firm identified above guarantees, through the guarantee specified in Subpart H or 40 CFR Parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration

of this guarantee _____.] [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in part A if you are using the financial test to demonstrate coverage *only* for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.147 or § 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.147 or § 265.147 are used.]

ALTERNATIVE I

1.	Amount of annual aggregate liability coverage to be demonstrated.	$.....	
*2.	Current assets	$.....	
*3.	Current liabilities	$.....	
4.	Net working capital (line 2 minus line 3).	$.....	
*5.	Tangible net worth	$.....	
*6.	If less than 90% or assets are located in the U.S., given total U.S. assets.	$.....	
		Yes	No
7.	Is line 5 at least $10 million?	.....	
8.	Is line 4 at least 6 times line 1?	.....	
9.	Is line 5 at least 6 times line 1?	.....	
*10.	Are at least 90% of assets located in the U.S.? If not, complete line 11.	.....	
11.	Is line 6 at least 6 times line 1?	.....	

ALTERNATIVE II

1.	Amount of annual aggregate liability coverage to be demonstrated.	$.....	
2.	Current bond rating of most recent issuance and name of rating service.	.....	
3.	Date of issuance of bond.	.....	
4.	Date of maturity of bond.	.....	
*5.	Tangible net worth	$.....	
*6.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	$.....	
		Yes	No
7.	Is line 5 at least $10 million?	.....	
8.	Is line 5 at least 6 times line 1?	.....	
9.	Are at least 90% of assets located in the U.S.? If not, complete line 10.	.....	
10.	Is line 6 at least 6 times line 1?	.....	

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage *and* closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of § 264.143 or § 264.145 and (f)(1)(i) of § 264.147 are used or if the criteria of paragraphs (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of § 264.143 or § 264.145 and (f)(1)(ii) of § 264.147 are used or if the criteria of paragraphs (e)(1)(ii) of § 265.143 or § 265.145 and (f)(1)(ii) of § 265.147 are used.]

ALTERNATIVE I

1.	Sum of current closure and post-closure cost estimates (total of *all* cost estimates listed above).	$.....	
2.	Amount of annual aggregate liability coverage to be demonstrated.	$.....	
3.	Sum of lines 1 and 2	$.....	
*4.	Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6).	$.....	
*5.	Tangible net worth	$.....	
*6.	Net worth	$.....	
*7.	Current assets	$.....	
*8.	Current liabilities	$.....	
9.	Net working capital (line 7 minus line 8).	$.....	
*10.	The sum of net income plus depreciation, depletion, and amortization.	$.....	
*11.	Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	$.....	
		Yes	No
12.	Is line 5 at least $10 million?	.....	
13.	Is line 5 at least 6 times line 3?	.....	
14.	Is line 9 at least 6 times line 3?	.....	
*15.	Are at least 90% of assets located in the U.S.? If not, complete line 16.	.....	
16.	Is line 11 at least 6 times line 3?	.....	
17.	Is line 4 divided by line 6 less than 2.0?	.....	
18.	Is line 10 divided by line 4 greater than 0.1?	.....	
19.	Is line 7 divided by line 8 greater than 1.5?	.....	

ALTERNATIVE II

1.	Sum of current closure and post-closure cost estimates (total of *all* cost estimates listed above).	$.....	

2.	Amount of annual aggregate liability coverage to be demonstrated.	$.....
3.	Sum of lines 1 and 2.....	$.....
4.	Current bond rating of most recent issuance and name of rating service.	.....
5.	Date of issuance of bond.	.....
6.	Date of maturity of bond.	.....
*7.	Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line).	$.....
*8.	Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.).	$.....
		Yes / No
9.	Is line 7 at least $10 million?	.....
10.	Is line 7 at least 6 times line 3?	.....
*11.	Are at least 90% of assets located in the U.S.? If not, complete line 12.	.....
12.	Is line 8 at least 6 times line 3?	.....

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] _____

[Name] _____

[Title] _____

[Date] _____

6. Section 264.151(h)(2) is amended by revising the heading for the "Corporate Guarantee for Liability Coverage" to read "Guarantee for Liability Coverage" and by removing "corporate" from paragraph (h)(2); and by removing paragraph 12 of the "Guarantee for Liability Coverage"; redesignating paragraphs 4 through 11 as paragraphs 5 through 12, adding new paragraphs 4, 13 and 14; and revising paragraph 10; to read as follows:

* * * * *

(h) * * *

(2) * * *

Guarantee for Liability Coverage

* * * * *

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absnce of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

* * * * *

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

* * * * *

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage cuased by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Principal

(Notary) Date

[Signatures]
Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in 40 CFR 264.151(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date: _____

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness of notary:

---

7. In § 264.151(i), paragraph 2.(d) of the "Hazardous Waste Facility Liability Endorsement" is revised to read as follows:

* * * * *

(i) * * *

Hazardous Waste Facility Liability Endorsement

* * * * *

(2) * * *

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

8. In § 264.151(j), paragraph 2.(d) of the "Hazardous Waste Facility Certificate of Liability Insurance" is revised to read as follows:

* * * * *

(j) * * *

Hazardous Waste Facility Certificate of Liability Insurance

(2) * * *

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corportation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located.

* * * * *

9. In § 264.151, a new paragraph (k) is added to read as follows:

* * * * *

(k) A letter of credit, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution
Regional Administrator(s)
Region(s)
U.S. Environmental Protection Agency

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of any and all third-party liability claimants, at the request and for the account of [owner's or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft, bearing reference to this letter of credit No. _____, and (1) a signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third-party claimants], hereby certify that the claim of bodily injury [and/or] property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $_____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Principal

[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the principal for bodily injury or property damage caused by a sudden or nonsudden accidental occurrence arising from operation of the principal's facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the USEPA Regional Administrator for Region [Region #], and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess"] coverage.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(k) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

10. In § 264.151, a new paragraph (l) is added to read as follows:

* * * * *

(l) A surety bond, as specified in § 264.147(h) or § 265.147(h) of this chapter, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Payment Bond

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond: _____

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence.	[insert amount]	[insert amount]
Annual Aggregate.	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the U.S. Environmental Protection Agency (EPA), particularly 40 CFR ["§ 264.147" or "§ 265.147"] (if applicable).

(3) Rules and regulations of the governing State agency (if applicable) [insert citation].

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability

coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidential occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Principal

[Notary] Date

[Signature(s)]
Claimant(s)

[Notary] Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Regional Administrator forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the USEPA Regional Administrator for Region [Region #], provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Regional Administrator, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(1), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]
State of incorporation: _____
Liability Limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

11. In § 264.151, a new paragraph (m) is added to read as follows:

* * * * *

(m)(1) A trust agreement, as specified in § 264.147(j) or § 265.147(j) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. *Identification of Facilities.* This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. *Establishment of Fund.* The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. *Payment for Bodily Injury or Property Damage.* The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]
Grantor

[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that:*

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2.(a), shall not be acquired or *held* unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this

Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. *Annual Valuations.* The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. *Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. *Successor Trustee.* The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. *Instructions to the Trustee.* All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 15. *Notice of Nonpayment.* If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equalling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the EPA Regional Administrator.

Section 16. *Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Regional Administrator will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of [enter name of State].

Section 20. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(m) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in §§ 264.147(j) or 265.147(j) of this chapter. State requirements may differ on the proper content of this acknowledgement.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

40 CFR Part 265 is amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 265.141, new paragraph (h) is added to read as follows:

§ 264.141 Definitions of terms as used in this subpart.

* * * * *

(h) "Substantial business relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator.

3. In § 265.147, paragraph (h) is redesignated as paragraph (k); paragraphs (a) introductory text, (a)(2), (a)(3), (b) introductory text, (b)(2), (b)(3), (b)(4) and (g) heading and (g)(1) introductory text are revised, and by removing and reserving paragraph (g)(1)(ii); paragraphs (g)(2)(i) and (g)(2)(ii) are amended by removing "corporate;" and new paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (b)(5), (b)(6), (b)(7), (h), (i), and (j) are added, to read as follows:

§ 265.147 Liability requirements.

(a) *Coverage for sudden accidental occurrences.* An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a) (1), (2), (3), (4), (5), or (6) of this section:

* * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

(b) *Coverage for nonsudden accidental occurrences.* An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in paragraph (b) (1), (2), (3), (4), (5), or (6) of this section:

* * * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Regional Administrator in writing within 30 days (i) whenever a claim for bodily injury or property damages caused by the operation of a hazardous waste treatment, storage, or disposal facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section and (ii)

whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (a)(1) through (a)(6) of this section is reduced.

* * * * *

(g) *Guarantee for liability coverage.* (1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in § 264.151(h)(2) of this chapter. A certified copy of the guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

* * * * *

(h) *Letter of credit for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Regional Administrator.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit must be identical to the wording specified in § 264.151(k) of this chapter.

(i) *Surety bond for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Regional Administrator.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in § 264.151(l) of this chapter.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of (i) the State in which the surety is incorporated, and (ii) each State in which a facility covered by the surety bond is located have submitted a written statement to EPA that a surety bond executed as described in this section and § 264.151(l) of this chapter is a legally valid and enforceable obligation in that State.

(j) *Trust fund for liability coverage.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in § 264.151(m) of this part.

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federal register

Thursday
September 1, 1988

Part IV

Commission on the Bicentennial of the United States Constitution

Bicentennial of the United States Constitution Education Grant Program; Announcement and Application Instructions

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Bicentennial of the United States Constitution Educational Grant Program; Announcement and Application Instructions

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Grant program announcement and application instructions.

SUMMARY: The Commission on the Bicentennial of the United States Constitution announces its instructions and application deadline for FY 1989 funding under its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for programs designed to improve the teaching of the Constitution and Bill of Rights to elementary and secondary school students. This grant program announcement and application instructions inform all interested individuals and organizations about the closing date for the receipt of applications for funding and how applications must be prepared for funding consideration by the Commission. The application instructions are based on the law and regulation which contain key requirements for all applicants to follow in seeking funding from the Commission.

DATES: Applications will be accepted from October 1, 1988 until November 14, 1988 at 5:30 pm.

ADDRESS: Constitution Bicentennial Educational Grant Program, Commission on the Bicentennial of the U.S. Constitution, 808 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Anne A. Fickling, (202) 653–5110.

SUPPLEMENTARY INFORMATION

I. Introduction

The 200th Anniversaries of the signing and ratification of the United States Constitution, the creation of the three branches of government, and the adoption of the Bill of Rights present important opportunities to encourage renewed reflection about, education on, and public interest in the principles and foundations of constitutional government. In 1976, we celebrated the Bicentennial of the Declaration of Independence, the document which set forth the principles of representative government. In 1987, we began the commemoration of the Constitution which was designed to put those principles into practice and which has provided a stable and workable plan of government for the past 200 years.

A key element in that commemoration should be the encouragement of renewed vigor in the teaching of the origins and fundamentals of the Constitution and American government in our elementary and secondary schools. The Commission's Educational Grant Program is designed to improve knowledge and understanding of the Constitution through the funding of teacher conferences and institutes, other exemplary programs, and the development of instructional materials for use in elementary and secondary schools. In addition, the Commission seeks proposals from organizations which will demonstrate innovative methods for using existing materials, including those materials developed under previous grants from the Commission. During the completed three rounds of the Grant Program, the Commission received 650 applications requesting over $32 million in project funding. Following its congressional mandate, the Commission funded 66 (+ 1988 Round 2) projects and awarded approximately $4.4 million in discretionary grant assistance.

Applicants are urged to read the program announcement carefully before submitting a proposal to the Commission. The program is very competitive and, therefore, only a small percentage of all applicants will receive assistance.

Funding of grant proposals in FY '89 is contingent upon a final appropriation by Congress. Preparation of an application is at an applicant's own expense and risk; the Commission cannot provide reimbursement for any proposal preparation expenses.

Duties of the Commission

The Commission on the Bicentennial of the United States Constitution (the Commission) was established by Pub. L. 98–101 Stat. 719, and signed by the President on September 29, 1983. Commission activities are governed by a 23 member Commission; the Honorable Warren E. Burger, Chief Justice of the United States, 1969–1986, serves as Chairman.

The Commission was created to promote and coordinate activities commemorating the 200th Anniversary of the United States Constitution and Bill of Rights. Section 6 of Pub. L. 98–101 charges the Commission with the following duties:

- To plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of programs to be undertaken by the Federal Government seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education.
- To encourage private organizations, and State and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the specific features of the document.
- To coordinate, generally, activities throughout the United States.
- To serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

II. The Program Mandate

The Commission's Educational Grant Program invites proposals for projects designed to provide elementary and secondary school students with a strengthened understanding of the Constitution, its antecedents, provisions, structure, and history. The Commission believes that an effective way to reach the students is through their teachers and, therefore, invites proposals which emphasize teacher training. Proposed programs should demonstrate how students will benefit and should result in instructional ideas, methods, and materials which teachers can share with others.

In Pub. L. 98–101, 97 Stat. 719, under Section 6(a), the Commission is authorized to give due consideration to—

(1) The historical setting in which the Constitution was developed and ratified, including such antecedents as the Federalist Papers, the Articles of Confederation, and the ratification debates in the States;

(2) The contribution of diverse ethnic and racial groups;

(3) The relationship and historical development of the three branches of government;

(4) The importance of activities concerning the Constitution and citizenship education throughout all of the States regardless of when such State achieved statehood;

(5) The unique achievements and contributions of the participants in the Constitutional Convention of 1787 and the State ratification proceedings;

(6) The diverse legal and philosophical views regarding the Constitution;

(7) The need for reflection upon both academic and scholarly views of the Constitution and the principle that the document must be understood by the general public;

(8) The substantive provisions of the Constitution itself;

(9) The impact of the Constitution on American life and government;

(10) The need to encourage appropriate educational curriculums designed to educate students at all levels of learning on the drafting, ratification, and history of the Constitution and the specific provisions of that document; and

(11) The significance of the principles and institutions of the Constitution to other nations and their citizens.

Applicants should keep in mind that within the mandate of the Commission, the origins, history, and enduring principles of the Constitution are of paramount importance, as against any particular controversies or issues of the moment. The Commission cannot support any proposal which argues for a partisan or ideological point of view.

Focus should be the men and events of 1787, not controversial interpretations of 1987; the Federalist Papers and the ratification debates in the States, not the textbooks of modern law schools; the substantive provisions of our Nation's foundational document, not the proposed legislative agenda of any single party or group. (Senate Report No. 98–68)

III. Priority Subject Areas for Grants in FY '89

The Commission encourages proposals which correspond to themes highlighted by the Commission during its five-year commemorative plan. The Commission has outlined a program for the Constitution's Bicentennial, and identified a specific anniversary and provided a specific focus for each year. In 1987, the emphasis was on the writing and signing of the Constitution. In 1988, the focus was on the ratification of the Constitution and the development of the Legislative Branch. The focus for the ensuing three years is as follows:

1989: The study of Congress will continue since 1989 marks the 200th anniversary of the first congressional elections. The Executive Branch also will receive special emphasis as we commemorate the 200th anniversaries of the first presidential inauguration and the first administration.

1990: The Bicentennial of the first session of the Supreme Court marks an appropriate year to focus on the Judiciary and its historical development.

1991: The final year of the bicentennial commemoration is designated for a study of the Bill of Rights, adopted in 1791, and subsequent amendments adopted throughout our history.

In its 1989 Educational Grant Program, the Commission continues to encourage project proposals which focus on the study of the Legislative and the Executive Branches; for those projects which will take effect in the 1989–90 school year, the Commission welcomes proposals which focus on the Judiciary. The topic of any proposal should, to some degree, be dictated by when the project will go into effect.

The doctrine of separation of powers should be addressed in any proposal dealing with the three branches of government. Although all three branches may be involved in the treatment of an issue, again the major focus of a proposal submitted to the 1989 Grant Program should be on the Executive Branch or the Judiciary.

One effective approach to these themes is to compare their operation in recent times with what was contemplated by those who drafted and ratified the Constitution and its amendments.

IV. Who May Apply and What May Be Funded

The Commission is authorized to accept applications from and award grants to:

- Local Educational Agencies;
- Private Elementary and Secondary Schools;
- Private Organizations;
- Individuals; and
- State and Local Public Agencies in the United States.

Colleges, Universities, and Adult Education Programs within the above categories are eligible to apply provided that the proposed project or program is designed principally for use in elementary and secondary schools. The Commission also encourages proposals from non-traditional educational organizations and those concerned with ethnic and minority interests, constituents for whom English is a second language, and other special interest organizations, such as those concerned with the learning disabled and hearing impaired. Awards will not be made to profit-making organizations. Non-profit organizations are requested to submit proof of their exempt status.

The Commission is authorized to make awards to organizations which will develop educational activities and programs, and instructional materials on the Constitution and the Bill of Rights for use in the elementary and secondary schools.

The Commission also is authorized by Congress to implement the National Bicentennial Competition on the Constitution and Bill of Rights, a continuing program developed by the Center for Civic Education. No discretionary grants, however, will be awarded for that program.

V. Exemplary Projects

The bicentennial commemoration has inspired an effort to stress civic education in the schools. The Commission urges schools, school districts, or organizations which have established highly successful educational programs on the Constitution or civic literacy to apply for limited funding to expand, replicate, or continue them. These programs could serve as models which, with a well-developed dissemination plan, will increase the availability of teaching materials and methods.

A number of these programs are currently conducted in elementary and secondary schools across the country. Leaders of these programs include educators, representatives of key community groups, bar associations, law enforcement agencies, and public service agencies. Through effective use of such existing programs, education on the Constitution and civic literacy in the nation's schools would be significantly enhanced.

In order to be eligible for funding as an exemplary project, applicants must provide written evidence of past program accomplishments, evidence of project recognition by others, and documentation of continued commitment to the project. There also must be evidence of an established plan of dissemination to other schools, school districts, and educational associations and institutions; in addition, the project must be made available to the Commission. Programs of this nature should link the understanding of the history and principles of the Constitution to civic responsibility today through individual classroom or school-wide projects. These programs may include co-curricular and extra-curricular learning activities as well as curricular studies.

The Commission anticipates funding a limited number of proposals of this nature for project support under the 1989 Educational Grant Program.

VI. In-Service Instruction

To help ensure a minimum level of basic teacher instruction on how to teach the Constitution to a maximum number of teachers, the Commission invites proposals from school districts or consortia of school districts which will develop and implement concentrated in-service training sessions for teachers from a school or school district. The Commission believes that through a cooperative effort, regional school

districts can develop a network whereby resources can be combined for greater effectiveness. Scholarly input, materials, and opportunities can be shared so that small and large districts alike will have the optimum training available. Through single-day training or through on-going supplemental training during the course of the school year, teachers can be provided with information and tools for teaching the concepts inherent in the Constitution.

Because grant support for in-service training is relatively modest, applicants who provide documented in-kind or cash match resources will be given priority consideration. Applicants seeking funding for in-service training are urged to detail their project in as short a narrative as possible.

VII. Diverse Activities

Many Formats Possible

The Commission is often asked to provide examples of fundable projects as guidance for prospective applicants. The Commission encourages a wide range of project activities employing a variety of formats using the funding emphases and themes mentioned above. We look to applicants to use their own imagination in designing a project. At the back of this package are synopses of all the projects which have received funding support from the Commission in the first two years of the Commission's Educational Grant Program. These projects might serve as points of departure for the development of a proposal for this grant cycle.

It is very important that in the proposal narrative, heavy emphasis be placed on the widespread benefits of the developed program. The program should reach more than the immediate project participants. Regardless of the specific project proposed, the result should be to develop student understanding of the history and principles of the Constitution, improve the ability of teachers to teach those topics, and provide the resources and methods to implement those skills.

VIII. What Activities May Not be Funded

Real property acquisition, construction, and research undertaken in pursuit of an academic degree may not be assisted with Commission funding. The Commission will not fund proposals which espouse partisan political or sectarian religious views or attack others, legislative proposals or proposals to intervene in on-going disputes, or proposals that would bring the Commission into the policy-making processes of any government or government agency. Grant money may not be used as honoraria for individuals who simply speak at the conferences or institutes. (This restriction does not prohibit funds from being used to support individuals whose broader participation in a conference or institute includes a speech.)

IX. Budget Information

All costs must be reasonable, necessary to accomplish program objectives, allowable in terms of the applicable federal cost principles, auditable, and incurred during the project period. Charges to the project of items such as salaries, fringe benefits, travel, and contractual services must conform to the written policies and established practices of the applicant organization.

The Commission encourages applications that include in-kind services or other sources of funding. Preference will be given to applicants who propose in-kind services in the project budgets.

Allowable Costs

Allowable project costs include:

- Salaries and wages for key personnel, administrative assistants, and secretaries;
- Fringe benefits;
- Consultant fees;
- Necessary and reasonable travel expenses (including subsistence costs when traveling) for key personnel and participants;
- Stipends for participants;
- Supplies and materials used in the project;
- Project-related services such as cost of duplication and printing, long-distance telephone, equipment rental (or purchase if less expensive), postage, and other services not included in the other categories or in the indirect cost pool and related to the project objectives.

It is important to incorporate donated, in-kind, or cash contributions into the overall budget.

X. Review Process: Introduction

Although applicants must follow the format prescribed under "PROPOSAL CONTENT" (which follows), no proposal should simply mirror the content of this announcement. It also is particularly important that proposals be free of jargon and technical language; they must be clear in both organization and expression. The discussion of the judging process in this section may help the applicant prepare a stronger proposal.

Applicants must submit a narrative of their proposal which is strictly limited to fifteen (15) double-spaced pages excluding the project budget explanation and appendix items. Proposals for in-service training should be shorter. Applicants may submit more than one proposal; each will be assessed independently.

Administrative and Merit Review of Applications. The review process that the Commission has established is highly competitive and involves several steps. Initially, each application is given an administrative review to ensure that all the necessary items are included in the package. Second, a number of external panels composed of educators, curriculum specialists, and scholars independently review and comment on proposals which are categorically related. Third, the Commission Grant Staff conducts its own substantive review of the applications.

Upon completion of the first three steps, the Grant Staff meets with the external panelists to discuss applications on their merits; on the basis of these deliberations, the Staff puts together a tentative list of fundable proposals. In preparing this list, the Staff will, on occasion, seek the advice of special consultants. All project budgets are reviewed independently by the Office of Justice Programs of the U.S. Department of Justice. A final group of recommended applications is then selected from the top rated proposals and presented to the Commission's Advisory Committee for Educational Projects for funding approval. This Advisory Committee considers the proposals and makes the final funding decisions.

The merit review of each application will focus on the relative significance and importance of proposals. Applicants should be sure to discuss: (1) The subject matter and educational needs being addressed; (2) the proposed activities in some detail; (3) the desired result or outcome of the project. As stated above, the applicant must demonstrate that the proposed project will affect a much larger audience than the immediate participants. A well thought out dissemination plan, therefore, should be included in the proposal and will be given weight in the overall review of proposals. Important, as well, is the inclusion of a self-evaluation plan; applicants are encouraged to include an explanation of a plan to evaluate the program and any materials developed during the course of the program. This will ensure that the dissemination of a program will be of use to others.

After a thorough review of the applications, Commission staff may telephone applicants in order to verify or clarify both substantive and budgetary information. The Commission also may contact others who are in a

position to know the applicant's work and plans, or who would be affected by the project.

Commissioners, Commission staff, and external reviewers will remove themselves from consideration of any application for a grant which might present the appearance of a conflict of interest. Individuals who believe they may have a potential conflict of interest arising from present or prior association with an applicant or for any other reason shall bring the situation to the attention of the Commission's Counsel for guidance.

Except in an instance in which some clarification of a grant proposal is needed to facilitate the evaluation, the Grant Staff is not allowed to discuss with applicants the status of a proposal. The staff is not at liberty to divulge the results of preliminary and tentative evaluations during any step of the review process. Given the meticulous nature of the evaluation procedures, involving several steps and several distinct groups of people, the divulging of such incomplete information may be more deceptive than helpful. Comments about proposals will only be made available to the applicants after the final award decisions have been made.

Throughout the review process, external reviewers and Commission staff will make judgments about the extent to which a project will provide elementary and secondary school teachers and students with a strengthened understanding of the Constitution and Bill of Rights.

XI. Selection Criteria

The Commission has developed the following criteria as general guidelines for judging all project proposals.

- The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (15 points)
- Potential of the project to make effective and appropriate use of existing and proven curricular materials, including those made available through Commission sponsorship and the Bicentennial Educational Grant Program. (5 points)
- The project is cost-effective in that expenditures are reasonable and appropriate to the scope of the project. (5 points)
- The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (10 points)
- The project represents an improvement upon existing teaching methods. (5 points)
- Applicants have the capacity to carry out the project as evidenced by:

—Academic and administrative qualifications of the project personnel;
—Quality of project design; and
—Soundness of project management plan.

(10 points)

Unfortunately, the Commission cannot fund projects, however commendable in other ways, which do not conform to its mandate and program emphases. Please, therefore, pay close attention to the Commission's guidelines when writing a proposal.

The decision to award funding assistance is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the Grant Program.

Funding decisions Cannot be appealed.

The Commission may, as it has in the past, have additional funding available at the completion of the first round and will announce a second round grant competition. Applicants not receiving funding in the first round competition may re-submit their proposals for a later evaluation cycle. Such re-submitted applications, however, will receive no special consideration; they must be submitted as new applications and will be evaluated on the same footing as all other applications.

XII. Commission Assistance

The Grant Staff of the Commission is available to any organization or individual in the process of writing a project proposal.

The Commission has attempted to make the application procedure and process as simple as possible. Nevertheless, applicants may have some questions both technical and general about completing the application for federal assistance. The Grant Staff of the Commission urges you to call them for assistance. Once an application is submitted to the Commission, changes cannot be made; it is to your advantage, therefore, to make sure that the application is properly completed. The staff is permitted to give technical assistance to those who are writing grant proposals.

When you are writing a proposal, especially if the project calls for special participants such as nationally known scholars or curriculum developers, make sure that these participants have at least tentatively committed to participate in the project, contingent upon funding. Also, include any letters of commitment from cosponsoring organizations or supporting organizations. A project will be given more credence if participants or organizations have been approached and tentative commitments have been made.

XIII. Submission Procedures and Closing Dates for Receipt of Proposals

Every application for a grant from the Commission must be made on application forms prescribed by the Commission. A complete application package consists of the following items:

1. Standard Form 424 with attachments;
2. Proposal abstract (one page);
3. Proposal narrative (5–15 *double-spaced* typed pages);
4. Proposal budget and a budget explanation.

The closing date for receipt of grant applications is November 14, 1988.

The announced closing date and procedures for guaranteeing timely submission will be strictly observed. The Commission reserves the option to invite additional applications if program funding is available. If new applicants are invited, notification will be placed in the **Federal Register**.

Applicants also should note that the closing date is the same regardless of whether the application is mailed or hand delivered. A mailed application meets the requirement if it is mailed on or before the stated closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following: (a) A legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice or receipt from commercial carrier; or, (d) any other tangible proof of mailing acceptable to the Commission.

If an application is sent through the U.S. Postal Service, the Commission will 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. Please use first class mail. All applicants will receive acknowledgment notices upon receipt of proposals.

Mailing Address

Commission on the Bicentennial of the United States Constitution, 808 17th Street, NW., Suite 800, Washington, DC 20006. Attn: Anne A. Fickling, Associate Director, Educational Grants Program, Telephone (202) 653–5110.

Final Proposals Sent by Mail

November 14, 1988.

Hand Delivered Final Proposals

Hand delivered final proposals will be accepted daily between the hours of 8:30 a.m. and 5:30 p.m., Eastern Standard Time except Saturdays, Sundays, and Federal Holidays. Proposals will not be accepted after 5:30 p.m. on any closing date.

Number of Copies of Final Proposal

All applicants must submit one (1) signed original application and five (5) copies. Each copy must be covered with Standard Form 424. Unsigned applications will be rejected.

Proposal Content

Proposals must be concise and clearly written. The proposal must contain the components listed below:

Title Page: Use Standard Form 424 (SF 424). Additional instructions are printed on the reverse side of SF 424.

Abstract: Attach a one-page, double-spaced abstract following SF 424. This is a key element in all applications, and should include: (1) A brief description of the project; (2) the proposed activities; and, (3) the project's intended outcome.

Budget: Applicants will prepare a complete budget including details of expenditures for salary, travel, etc. Indirect costs may be assessed at a rate previously approved by another agency of the federal government. Applicants who need to establish an indirect cost rate should contact the Commission. Be sure to include TOTAL project cost, incorporating all other funding sources.

Budget Explanation: Applicants will include a budget statement explaining (1) the basis used to estimate major costs (professional personnel, consultants, travel and indirect costs) and any other costs that may appear unusual; and (2) how the major costs relate to the proposed budget activities.

Project Narrative: *Applicants Must Provide a Narrative Statement Limited to Fifteen Double-Spaced Typed Pages* for project proposals. Include the following information:

(I) Project Description: A description of the project activities and how they relate to the selection criteria;

(II) Outcome and Plans for Wider Impact: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the program participants (provide an estimate of number of teachers/students who will benefit); be sure to include a specific dissemination plan.

(III) Other Aspects of the Project: A description of any other especially significant aspects of the proposed project;

(IV) Personnel and Institutional Information: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

Equal Opportunity

The Commission on the Bicentennial of the United States Constitution is responsible for ensuring compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving federal assistance under this grant program. Any person who believes he or she has been discriminated against in any program, activity, or facility receiving a Commission grant should write immediately to Director of Educational Programs, Commission on the Bicentennial of the United States Constitution, 808 17th Street NW., Washington, DC 20006.

Authority Citation

Authority: Title V of Pub. L. 99–104; 45 CFR Part 2010.

Herbert M. Atherton,

Director, Educational Programs.

BILLING CODE 6340-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction *Preapplication* ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

[FR Doc. 88-19923 Filed 8-31-88; 8:45 am]
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federal register

Thursday
September 1, 1988

Part V

Department of Education

Law-Related Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

DEPARTMENT OF EDUCATION

[CFDA No.: 84.123]

Law-Related Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

Note To Applicants: This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: To provide persons with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based.

Deadline for Transmittal of Application: October 17, 1988.

Deadline for Intergovernmental Review: December 16, 1988.

Available Funds: The Department has requested $3,200,000 for this program for fiscal year 1989. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Awards: $10,000–$500,000.

Estimated Average Size of Awards: $90,000.

Estimated Number of Awards: 35.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), Part 79 (Intergovernmental Review of Department of Education Programs and Activities) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); and (b) The regulations for this program in 34 CFR Part 241.

Description of Program: Law-related education is designed to support the development of an educated citizenry that understands and participates effectively in our democratic system of government. It seeks to (1) give persons, as part of their general education, knowledge and skills pertaining to the law, the legal system, the legal process, and the fundamental values and principles on which they are based; and (2) help children, youth and adults become more informed and effective citizens.

Invitational Priorities

The Secretary invites applications for projects to develop, test, demonstrate, and disseminate new approaches or techniques in law-related education that can be used or adopted and eventually institutionalized by other agencies and institutions. The Secretary is particularly interested in applications that include activities designed to meet one or more of the following invitational priorities:

(a) Promote and foster an awareness of the fundamental principles of representative democracy and the Federalist concept of government in the United States.

(b) Increase knowledge and understanding of the function of law in different societies, with an emphasis on the evolution of law within the context of Western culture and civilization.

(c) Show the significance of moral and ethical choices in the making and following of laws.

(d) Increase knowledge and understanding of the differing jurisdictional authorities and functions of local, State, and Federal court and legal systems in the United States.

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive from the Secretary a competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria in evaluating each application:

(a) *Institutionalizing law-related education.* (35 points).

The likely success of the project in helping to institutionalize law-related education programs as measured by the extent and quality of activities that contribute to—

(1) An increase in the number of educators and others who are competent in law-related education; and

(2) The development of partnerships among State educational agencies, local educational agencies, and other public and private agencies for the implementation of law-related education programs in the classroom.

(b) *Plan of operation.* (15 points)

(1) The quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the programs;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (15 points)

(1) The quality of the key personnel the applicant plans to use in the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in the fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Quality of project.* (15 points)

The likely quality of the project as measured by the following:

(1) Evidence of applicability to classroom use and age-level of students of the applicant's materials, programs, or approaches in law-related education.

(2) The applicant's and the staff's experience in and knowledge of law-related education.

(3) How the project addresses a diversity of learning approaches that are—

(i) Appropriate to the students to whom the project is directed;

(ii) Designed to address gains not only in students' knowledge, but also in their skills; and

(iii) Balanced and based on sound scholarship and do not advocate particular legal or political viewpoints.

(4) The involvement of the appropriate State educational agency or agencies in the planning and conduct of the project.

(e) *Budget and cost effectiveness.* (8 points)

(1) The extent to which the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (7 points)

(1) The quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The extent to which the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

Condition of Award: An LEA that receives a grant under this program must provide for the equitable participation of private school children in the project, in accordance with section 586 of the Education Consolidation and Improvement Act of 1981.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process recommendations and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA No. 84.123, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6440.

Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.123, Washington, DC 20202; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.123, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(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 carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes.—(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope the CFDA number—84.123—of the competition under which the application is being submitted.

For Further Information Contact: Janice Williams-Madison, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2065, FOB #6, Washington, DC 20202. Telephone: (202) 732–4358.

Application Instructions and Forms: The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance SF–424 (Rev. 4/88) and instructions.

Budget Information—Non-Construction Programs (SF–424A) and instructions.

Part II: Assurances—Non-Construction Programs (SF–424B). Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Part III: Application Narrative.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application, the assurances, and the certification form must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

Program Authority: 20 U.S.C. 3851.

Dated: August 26, 1988.

William D. Hansen,

Acting Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State	H Independent School Dist.
B County	I State Controlled Institution of Higher Learning
C Municipal	J Private University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Profit Organization
G Special District	N Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration

D Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 2 3

TITLE: Law-Related Education Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 REV 4-88
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. **Federal**	$	$	$	$	$
14. **NonFederal**					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. **Direct Charges:**	22. **Indirect Charges:**

23. **Remarks**

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

ED Form GCS-008, 6/88

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Telephone Number).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. The program narrative should not exceed twenty (20) double-spaced typed letter size pages.

1. Objectives and Need for This Assistance

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood health center provide a description of who will occupy the facility, how the facility will be used, and how the facility will benefit the general public.

3. Approach

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity, provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to other. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

b. Provide for each grant program, function or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved in such terms as the number of jobs created; the number of people served; and the number of patients treated. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. Geographic Location

Give a precise location of the project or areas to be served by the proposed project. Maps or other graphic aids may be attached.

5. If Applicable, Provide the Following Information

a. For research or demonstration assistance requests, present a biographical sketch of the program director with the following information; name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.

b. Discuss accomplishments to date and list in chronological order a schedule or accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location approach, or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded, or if individual budget items have changed more than the prescribed limits contained in Attachment K to Office of Management and Budget Circular No. A–102, explain and justify the change and its effect on the project.

c. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

6. Applicants should refer to the Selection Criteria listed in this Notice Inviting Applications for New Awards.

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federal register

Thursday
September 1, 1988

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Visayan Deer, Mead's Milkweed and Boulder Darter; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Visayan Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Visayan deer, a mammal found only in the central archipelago of the Philippines. It survives in a very restricted range, and is jeopardized by human habitat disruption and direct killing. This rule implements the protection of the Endangered Species Act of 1973, as amended, for the Visayan deer.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority (Mail Stop: Room 527, Matomic Building), U.S. Fish and Wildlife Service, Washington, DC 20240 (202–653–5948 or FTS 653–5948).

SUPPLEMENTARY INFORMATION:

Background

The Visayan deer (*Cervus alfredi*) was described in 1870, and for many years thereafter was considered a separate species (Taylor 1934). In recent decades, however, it was generally treated as a subspecies of the more widespread Philippine sambar (*C. mariannus*), or even of the common sambar (*C. unicolor*) found throughout Southeast Asia (Honacki, Kinman, and Koeppl 1982; Nowak and Paradiso 1983). Then, Grubb and Groves (1983), in a detailed study of the taxonomy of Philippine deer, again recognized *C. alfredi* as a full species. Moreover, they considered it the most, or perhaps second most, distinct kind of sambar deer.

According to Taylor (1934), *C. alfredi* is a small deer, standing about 25 inches (640 millimeters) at the shoulder. The ears, tail, and antlers (of the male) are relatively short. The hair is very fine and remarkably dense and soft. Coloration of the upper parts is generally very dark brown, and the underparts are buffy. The shoulders, back, and sides are marked throughout the year by yellowish white spots. Grubb and Groves (1983) emphasized that the presence of a spotted adult coat distinguishes *C. alfredi* from all other sambar deer. *C. alfredi* also differs from the others in its fine and dense pelage, in having a relatively narrow skull, and in various other cranial characters.

As pointed out by Grubb and Groves (1983), *C. alfredi* is one of the rarest deer, with only 11 museum specimens being reliably recorded. Its range is the most restricted of all extant species of the genus *Cervus*. It is known only from certain of the Visayan Islands in the central archipelago of the Philippines, and not from the larger islands of Luzon or Mindanao. For many years it seems to have been ignored by the world's conservation community, perhaps because it was thought to be only a subspecies of the Philippine sambar, but also because so little was known of its status. There has been a recent upsurge of interest by the Government of the Philippines and conservation organizations. A field survey by the International Union for Conservation of Nature and Natural Resources (Cox 1985) has clarified the precarious situation of this rare deer and shown that it warrants classification as endangered. In addition, at its June 1986 meeting, the American Society of Mammalogists passed a resolution recognizing that the Visayan deer is in imminent danger of extinction, and encouraging conservation efforts.

In the **Federal Register** of August 19, 1987 (52 FR 31051–31053), the Service published a proposed rule to determine endangered status for the Visayan deer. In that proposal, and associated notifications, all interested parties were requested to submit comments and information that might contribute to the development of a final rule. No responses were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service as determined that the Visayan deer should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Visayan deer (*Cervus alfredi*) are as follows (information from Cox 1985, unless otherwise noted):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Visayan deer originally inhabited eight islands in the central Philippine archipelago: Bohol, Cebu, Guimaras, Leyte, Negros, Panay, Samar, and Siquijor. It was still fairly widespread in the early 20th century, but a precipitous decline began after World War II, with the advent of intensive upland logging. Such activity eliminated much of the dense forest habitat on which the deer depends, and also made its range more accessible to settlers and hunters. The increasing human population in the region comprised both indigenous peoples and migrants from coastal lowlands and villages. Each group practiced slash and burn agriculture, which involves clearing an area of forest, planting and harvesting crops, and then moving on to another area. This practice has accounted for nearly as much forest destruction as has commercial logging. In an ironic twist, the latter activity was greatly curtailed in the Philippines in 1983, but the resulting unemployment forced many people to turn to slash and burn agriculture and to subsistence hunting.

Dr. Lawrence R. Heaney (U.S. National Museum of Natural History, pers. comm., 1987), an authority on the mammals of the Philippines, reports that in the area occupied by the Visayan deer "the habitat has been destroyed at a rate that is truly frightening. On Negros Island, for example, were I and my students have done extensive field work since 1981, we have documented a reduction in primary forest from 60 percent of the island's area at the end of World War II to 6 percent currently. There is no island that is exempt from this."

Habitat loss has been so devastating that the Visayan deer is thought to have disappeared entirely from the islands of Bohol, Cebu, Guimaras, and Siquijor. It still survives on the other four islands of its original range, but only in relatively small and isolated patches of remnant habitat. Two extremely localized populations are known on Leyte, one in the north and one in the south of the island. There are also four small groups in south-central Samar and two in southern Negros. On Panay, the Visayan deer is still found in six parts of the western mountain chain. The largest group is in the Mount Madja-as/Mount Baloy area, but if the current rate of habitat loss and hunting pressure continues, even this population would not be expected to survive to the end of the century.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the Visayan deer is

protected by Philippine law, hunting pressure is intense, especially during the dry season when the forests are more accessible. The deer is sought as a source of food by both indigenous peoples of the region and increasing numbers of immigrants from crowded towns and coastal areas. It is not only shot, but is trapped, snared, and run down with dogs.

C. *Disease or predation.* Not know to be factors at the present time.

D. *The inadequacy of existing regulatory mechanisms.* The Visayan deer is legally protected by the Philippine Government, and its habitat also falls to some extent within parks and reserves. Such protective mechanisms, however, are having only a slight effect. Although the present Government is highly concerned about the status of the deer and its habitat, enforcement personnel and funding for conservation efforts are very limited. Rangers can do little to cover all the remote areas where illegal hunting and forest destruction are taking place (see also "E" below). The Government has attempted to establish a captive breeding facility, but no success has yet been achieved and funds are badly needed to improve the operation.

E. *Other natural or manmade factors affecting its continued existence.* The Visayan deer occurs to a large extent in areas that are sometimes under the influence of revolutionary forces and where military operations are carried out. Such activity places further restrictions on the ability of the Government to enforce protective laws and undertake conservation measures.

The decision to determine endangered status for the Visayan deer was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. A decision to take no action would exclude this mammal from benefits provided by the Endangered Species Act. A decision to determine only threatened status would not adequately reflect the evident rarity and multiplicity of problems confronting the species. Critical habitat is not being determined, as such designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. With respect to the Visayan deer, no such Federal actions are now known.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental taken in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. With respect to the Visayan deer, no permits for import, export, or undue economic hardship are now anticipated.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Cox, C.R. 1985. A field survey of the distribution and conservation status of the wild pig (*Sus barbatus cebifrons*) and Prince Alfred's spotted rusa (*Cervus alfredi*) in the Visayan Islands, Republic of the Philippines. International Union for Conservation of Nature, 27 pp.

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Taylor, E.H. 1934. Philippine land mammals. Philippine Bur. Sci. Monogr. no. 30, 548 pp.

Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (202–653–5948 or FTS 653–5948).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Deer, Visayan	*Cervus alfredi*	Philippines	Entire	E	320	NA	NA
*	*	*	*	*	*	*	

Dated: August 18, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19941 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Asclepias Meadii (Mead's Milkweed)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Asclepias meadii* (Mead's milkweed), a prairie perennial, to be a threatened species under the authority of the Endangered Species Act (Act) of 1973, as amended. Approximately 81 populations are currently known; 59 in Kansas, 3 in Illinois, 2 in Iowa, and 17 in Missouri. The plant is believed extirpated from Indiana and Wisconsin. It is threatened by destruction and modification of the "tall grass" prairie due to agricultural expansion, urban growth, and agricultural practices such as mowing and grazing, which are detrimental to the plant's reproductive cycle. This action will implement Federal protection provided by the Act for *Asclepias meadii*.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, MN 55111.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see ADDRESSES section) at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Asclepias meadii (Mead's milkweed) was first collected by Dr. Samuel Barnum Mead in Hancock County, Illinois, in 1843, and subsequently described by John Torrey in an 1856 addendum to the second edition of *Gray's Manual of Botany* (Betz 1967).

Asclepias meadii is a perennial that usually occurs in virgin prairie as a solitary plant or with a few closely associated individuals (Kurz and Bowles 1981). Ronald McGregor (University of Kansas, pers. comm. 1985) has found *Asclepias meadii* only in tall grass prairies. Morgan (1980) reports that Missouri populations are found in unplowed bluestem prairie in the unglaciated region of the State where the soils are deep silt loam. Betz and Hohn (1978) report that this species occurs on virgin mesic silt loam prairies and occasionally on limestone glade prairies in Missouri and southern Illinois. Betz and Hohn (1978), and Kurz and Bowles (1981) report that very few individual plants are found at any given population, with most populations containing less than a dozen plants. Ralph Brooks (Kansas Biological Survey, pers. comm. 1986) reports that populations in Kansas seem to average about 20 plants each. Craig Freeman (Kansas Natural Heritage Program, pers. comm. 1988) recently reported that approximately 20 percent of the known Kansas populations contained over 100 plants, and were of high quality. Associated species found with *Asclepias meadii* are *Sorghastrum nutans, Andropogon gerardii, Petalostemum candidum, Gentiana puberula, Ruellia humilis,* and *Silphium laciniatum* (Betz and Hohn 1978). *Platanthera praeclara* (Western prairie fringed orchid) recently segregated as an allopatric species from *Platanthera leucophaea* (Eastern prairie fringed orchid) and considered as a candidate for Federal listing is also associated with *Asclepias meadii* at several locations in Kansas (Sheviak and Bowles, pers. comm. 1986).

Asclepias meadii usually commences its seasonal growth in mid to late April. It has a solitary, slender, unbranched stalk, 8–16 inches (20–40 centimeters) high, without hairs, but with a whitish, waxy covering. The leaves are opposite, broadly ovate, 2–3 inches (5–7.5 centimeters) long, 3/8–2 inches (1–5 centimeters) broad, without hairs and also with a whitish, waxy covering. A solitary umbel at the top of a long stalk has 6–15 greenish ivory/cream colored flowers which appear in late May and early June. Young green fruit pods appear by late June and reach their maximum length of 1.5–3 inches (4–8 centimeters) by late August or early September. As these pods mature they darken and the hairy seeds borne within are mature by mid October (Morgan 1980, Kurz and Bowles 1981).

Historically *Asclepias meadii* ranged throughout much of the "tall grass" prairie. It is now restricted to 81 known sites in 23 counties within Illinois, Iowa, Kansas, and Missouri. It is thought to be extirpated in Indiana and Wisconsin (Bacone et al 1981, Alverson 1981). In Illinois the plant's former range of seven counties has been reduced to two; Ford and Saline Counties, where two of the three populations are found on public land administered by the U.S. Forest Service. The other population occurs within a railroad right-of-way (Kurz and Bowles 1981). The plant's range in Missouri, once covering 11 counties, as reported by Betz and Hohn (1978), has now been reduced to seven counties: Barton, Benton, Dade, Pettis, Polk, St. Clair, and Vernon (S.Morgan Missouri Department of Conservation, pers. comm. 1986). Nine of the 17 extant Missouri populations are in public ownership. Watson (1983) reported that *Asclepias meadii* was historically known from five counties in Iowa, but all had been extirpated. A recent report by M. Leoschke (Iowa Department of Natural Resources, pers. comm. 1986) reveals one population with one plant in Warren County, Iowa. Larry Wilson (Iowa Department of Natural Resources, pers. comm. 1987) reports another population with six plants in Adair County. All of the Iowa plants are on private land and unprotected from habitat alteration. McGregor (pers. comm. 1985) reported 11 populations of *Asclepias meadii* in 9 Kansas counties (Anderson, Bourbon, Coffey, Douglas, Franklin, Jefferson, Johnson, Leavenworth, and Miami). Brooks (pers. comm. 1986) reports that field survey work conducted in these nine counties, as well as Allen and Linn counties during the summer of 1986, resulted in the discovery of 29 additional populations. More recent survey results show 19 new populations, with one of these in Neosho county (C. Freeman, pers. comm. 1988). Only the population

in Jefferson county is protected. A population in Douglas county and another in Leavenworth county have been destroyed.

Federal Government actions on Mead's milkweed began with section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A) and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Asclepias meadii* (Mead's milkweed) was included in the July 1, 1975, notice of review and the June 16, 1976 proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909).

On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments to the Act. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register**. *Asclepias meadii* was included in that notice as a category 1 species.' Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted. On September 27, 1985 (50 FR 39525) the Service again published a revised notice for native plants in the **Federal Register**; *Asclepias meadii* was included in that notice as a category 2 species. Category 2 species are those for which the Service believes additional data must be obtained before a proposal to list is warranted. Status information received since the September 27, 1985 (50 FR 39525) notice indicated that proposing to list *Asclepias meadii* as a threatened species was warranted. On October 21, 1987, the Service published in the **Federal Register** (52 FR 39255) a proposal to list *Asclepias meadii* as a threatened species. The Service now determines *Asclepias meadii* to be a threatened species with the publication of this final rule.

Summary of Comments and Recommendations

In the October 21, 1987, proposed rule (52 FR 39255) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: *The Daily Register*, Harrisburg, Illinois; *Paxton Record*, Paxton, Illinois; *Record Herald and Indianola Tribune*, Indianola, Iowa; *Coffee County Today*, Burlington, Kansas; *The Lawrence Daily Journal-World*, Lawrence, Kansas; *The Leavenworth Times*, Leavenworth, Kansas; *Ottawa Herald*, Ottawa, Kansas; *Benton County Enterprise*, Warsaw, Missouri; *Bolivar Herald-Free Press*, Bolivar, Missouri; *The Daily Mail*, Nevada, Missouri; *Greenfield Vedette*, Greenfield, Missouri; *Lamar Democrat*, Lamar, Missouri; *Springfield News-Leader*, Springfield, Missouri, and *St. Clair County Courier*, Osceola, Missouri. Eight comments were received and are discussed below.

Comments supporting the listing were received from the U.S. Forest Service, The Nature Conservancy, Iowa Department of Natural Resources, Missouri Department of Conservation, Indiana Department of Natural Resources, and two private citizens. The Nebraska Statewide Arboretum did not take a position on the listing, but did offer findings from germination studies. The Missouri Department of Conservation requested that critical habitat not be designated because publishing a critical habitat map may result in further population decline due to collecting. The U.S. Forest Service reported that a recovery effort for Mead's milkweed has begun on the Shawnee National Forest in Saline County, Illinois, where burning and vegetation control measures are being initiated. The Iowa Department of Natural Resources provided information about a recently discovered population of Mead's milkweed in Adair County.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Asclepias meadii* Torr. (Mead's milkweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Asclepias meadii* is threatened by the elimination of its "tall grass" prairie habitat due to urban development, agricultural expansion and detrimental agricultural practices. McGregor (pers. comm. 1985) reports that over the last 40 years he has observed the slow elimination of prairie hay meadows through plowing, conversion to grazing, and development. Betz and Hohn (1978) also note that prairie hay meadows are being plowed and put into grain crops; even those hay meadows remaining, are mowed once or twice each year before *Asclepias meadii* plants are able to set seeds. McGregor (pers. comm. 1985) also reports that yearly mowing of these tall grass prairies where *Asclepias meadii* is found severely restricts the plants reproduction and any chance for increased distribution. Kurz and Bowles (1981) report that *Asclepias meadii* populations occurring within railroad rights-of-way in Ford County, Illinois, are threatened by erosion, lack of fire, use of herbicides and plowing, while the populations in Saline County are threatened by woody encroachment and trampling by hikers. McGregor (pers. comm. 1985) reports that one of the best Kansas populations, the one in which Brooks counted 800–1,000 plants in 1985, is in an area certain to be developed for housing in the next few years. Another large population of Mead's milkweed may be threatened if a proposed perimeter highway around Lawrence, Kansas, is constructed. Larry Gale (Missouri Department of Natural Resources, pers. comm. 1987) believes the principal threat to the species in Missouri, has been the loss of suitable habitat, combined with continual hay mowing and intensive grazing.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites.

C. *Disease or predation.* McGregor (pers. comm. 1985) reports that it is not unusual to find aerial portions of *Asclepias meadii* plants suddenly wilting and dying because of infestation of a beetle larvae (Curculionidae) in the rootstalk. McGregor (pers. comm. 1985) also notes that other insects puncture the peduncle, killing the inflorescence just at the blooming period. Betz and Hohn (1978) report that the larvae of *Tetraopes femoratus* are destructive to the small root system of *Asclepias meadii*, but not to the larger milkweeds such as *Asclepias syriaca* and *Asclepias sullivantii* which seems to tolerate more infestation than *Asclepias meadii*.

D. *The inadequacy of existing regulatory mechanisms. Asclepias meadii* is officially listed as endangered by the States of Illinois, Iowa, and Missouri. Kansas does not have specific legislation or rules to protect endangered or threatened plants. Illinois law protects those endangered and threatened plants found on State property and prohibits taking State endangered plants without written permission of the owner; it also prohibits sale of State endangered plants. State permits are required for taking or possessing Federal endangered plants. Iowa regulations prohibit removal, possession, and sale of any plant species on the Federal or State lists. The Missouri regulations prohibit exportation, transportation, or sale of plants on the State or Federal lists; collecting, digging, or picking any rare or endangered plant without permission of the property owner is prohibited. Although *Asclepias meadii* is offered various forms of protection under these State laws, monitoring and enforcement are difficult due to limited personnel. While approximately 15 percent of the known populations of *Asclepias meadii* are located on public lands and receive some form of protection, the majority of the known populations are, as yet, unprotected. The Conservation Reserve Program provision of the Food Security Act of 1985 (Pub. L. 99–198) provides an opportunity for landowners to take highly erodible land out of annual crop production and receive annual rental payments for applying soil conservation measures. However, virgin prairies where *Asclepias meadii* is found, do not qualify for this type of conservation treatment, and hence, afforded protection from annual mowing is limited. We are not aware of any populations of *Asclepias meadii* in the Conservation Reserve Program. The "Sodbuster" provision of the Food Security Act of 1985 is aimed at reducing the conversion of highly erodible lands to agriculture production. Some virgin prairies where *Asclepias meadii* occurs could be protected under this regulation. The Endangered Species Act offers possibilities for additional protection of this taxon through Section 6 by cooperation between the States and the Service, and through Section 7 (interagency cooperation) requirements. The Endangered Species Act would afford additional protection to *Asclepias meadii.*

E. *Other natural or manmade factors affecting its continued existence.* Betz and Hohn (1978) report that the low number of individual plants at any one site do not attract potential pollinators, possibly the cause for low reproduction success. Betz and Hohn (1978) also report that studies at the Morton Arboretum indicate five to eight years are necessary for plants to mature from seed. McGregor comments that Kansas populations of *Asclepias meadii* tend to have larger numbers of plants in some years and fewer in others. Betz and Hohn (1978) have also observed that individual plants produce flowers for two or three years and then rest, and in some cases completely disappear for a few years. Research is needed to better understand this fluctuation phenomenon in order to maintain and promote the species. James Locklear (Nebraska Statewide Arboretum, pers. comm. 1987) has found the germination and survival rates of *Asclepias meadii* to be poor, ranging from 23–33 percent. Locklear believes poor germination success may substantiate the theory that the plant is self-sterile. L.R. Gale (pers. comm. 1987) also reports low germination and seed production in Missouri. Gale also mentions that the plant's inability to produce high levels of latex to repulse herbivores, may be a detriment to survival.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Asclepias meadii* as threatened. Eighty-one populations of this species are known to exist. Eighty-five percent of the populations are on privately owned property and receive no protection or management designed to enhance the species' continued existence. Threatened status is appropriate because without protection and further research the vulnerability of this species will continue. For reasons detailed below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Asclepias meadii* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition, if necessary, and cooperation with the States. It also requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of such a species or result in destruction or adverse modification of critical habitat, if any is being designated. Section 7(a)(2) of the Act, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible

Federal agency must enter into formal consultation with the Service.

The Food Security Act of 1985 (Pub. L. 99–198) also provides, at sections 1314 and 1318, opportunities for the Service and State conservation agencies to acquire restrictive easements beneficial to endangered and threatened species on lands acquired by the Farmers Home Administration from farm foreclosures. Upon notification by the Farmers Home Administration of pending foreclosures, the Service is continually reviewing possible areas where restrictive easements would benefit endangered and threatened species.

The U.S. Forest Service has jurisdiction over the *Asclepias meadii* population in Saline County Illinois. Federal activities that could affect the species and its habitat in the future could include forest management practices and recreational and interpretive development. The Forest Service has conferred with the Service regarding a proposal to initiate management actions which will include prescribed burns, and cutting and removal of woody species to improve the Mead's milkweed habitat. The Service believes these are the types of management actions necessary to enhance the survival of the species and has advised the Forest Service that the Service has no objections to this activity. It has been the experience of the Service that the majority of section 7 consultations are resolved so the species is protected and the project can continue.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commerce in *Asclepias meadii* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27239, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Alverson, W.S. 1981. Status Report on *Asclepias meadii*. Wisconsin Department of Natural Resources. Unpubl. ms. 4 pp.

Bacone, J.A., Crovello, T.J., and Hauser, L.A. 1981. Status Report on *Asclepias meadii*. Indiana Department of Conservation. Unpubl. ms. 10 pp.

Betz, R.F. 1967. The Ecology of *Asclepias*, especially *Asclepias meadii* Torrey, and a study of the factors contributing to their possible extinction as a wild plant. A Research proposal to the National Science Foundation, Washington, DC.

Betz, R.F. and Hohn, J.E. 1978. Status Report for *Asclepias meadii* Torr. prepared for the U.S. Fish and Wildlife Service. 9 pp.

Kurz, D.R. and Bowles, M.L. 1981. Report on the status of Illinois vascular plants potentially endangered or threatened in the United States. Natural Land Institute, Rockford, Illinois. Unpubl. ms. 10 pp.

Morgan, S.W. 1980. Status Report on *Asclepias meadii*. Missouri Department of Conservation. Unpubl. ms. 15 pp.

Watson, W.C. 1983. Status Report of *Asclepias meadii*. Iowa Conservation Commission. Unpubl. ms. 11 pp.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section) (612/725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Accordingly Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asclepiadaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asclepiadaceae—Milkweed family						
*	*	*	*	*	*	*
Asclepias meadii	Mead's milkweed	U.S.A. (IL, IN, IA, KS, MO, WI)	T	321	NA	NA
*	*	*	*	*	*	*

Dated: August 11, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19942 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for the Boulder Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates a small fish, the boulder darter (*Etheostoma* (*Nothonotus*) sp.), formerly referred to by the Service as the Elk River darter, as an endangered species under the Endangered Species Act (Act) of 1973, as amended. This species is presently known from only about 25 miles (46 kilometers) of the lower Elk River system in Giles County, Tennessee, and Limestone County, Alabama. The species' decline has resulted primarily from habitat alteration associated with water impoundment. Due to the species' limited distribution, any factor that adversely modifies habitat or water quality in the short river reach it now inhabits could further threaten its survival. Determination of endangered species status implements the protection of the Act of the boulder darter.

EFFECTIVE DATE: October 3, 1988.

ADDRESSES: A complete file of this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The boulder darter (*Etheostoma* sp.) is an undescribed species in the subgenus *Nothonotus* (a manuscript describing it is in preparation, Dr. David Etnier, University of Tennessee, personal communications, 1988). It attains a maximum length of about 3 inches (7.6 centimeters) (Dr. David Etnier, personal communications, 1987). The body of males is olive to gray, and they lack the red spots that are characteristic of closely related species. The female's color is similar but lighter. Both sexes have a gray to black bar located below the eye and a similar colored spot behind the eye. Because of the species' rarity (less than 50 specimens have ever been collected), its biology is unknown. This darter has historically been collected from the Elk River as far upstream as Fayetteville, Lincoln County, Tennessee (at approximately river mile 90), and downstream through Giles County, Tennessee, into Limestone County, Alabama (at approximately river mile 30); from two Elk River tributaries, Indian Creek and Richland Creek, Giles County, Tennessee; and from Shoal Creek, Lauderdale County, Alabama (O'Bara and Etnier 1987). Based on knowledge of the species' preferred habitat (fast-moving water runs over large boulder and slab rock substrate), it is believed the species once also inhabited the southern bend of the Tennessee River, at least in areas near its confluence with the Elk River and Shoal Creek (Dr. David Etnier, personal communications, 1987).

Based on a recently completed status survey of the species' historic range and potential distribution in other Tennessee River tributaries in Tennessee and Alabama (O'Bara and Etnier 1987), the species is presently restricted to about 23 miles (43 kilometers) of the Elk River in Giles County, Tennessee (20 miles or 37 kilometers), and Limestone County, Alabama (3 miles or 6 kilometers), and just over 2 miles (3 kilometers) of Richland Creek and Indian Creek (Giles County, Tennessee). The species' extirpation from the upper Elk River, Lincoln County, Tennessee, was likely due to the impacts of cold water releases from Tims Ford Reservoir. The loss of the Shoal Creek population and any Tennessee River populations resulted from water impoundments behind Wheeler and Wilson Dams. The Shoal Creek population loss also may be partially attributed to past pollution from a large manufacturing plant. Because of the species' present limited distribution (about 25 river miles or 46 kilometers) and the limited availability of boulder darter habitat (fast-moving water with boulder substrate) in the Elk River system, any factor that modifies or degrades the habitat or water quality in these short river reaches could further threaten the species' survival.

On September 18, 1985, the Service announced in the **Federal Register** (50 FR 37958) that the boulder darter (referred to as the Elk River darter in that notice), along with 136 other fish species, was being considered as a candidate for addition to the List of Endangered and Threatened Wildlife. On February 10, 1987, the Service notified Federal, State, and local governmental agencies by mail (State fish and wildlife agencies and affected county governments were also contacted by phone) that a status review of the boulder darter was being conducted and that the species could be proposed for listing. Four responses to the February 10, 1987, notification were received. Support for the proposal was received from the Tennessee Wildlife Resources Agency and the Tennessee Department of Conservation. The Tennessee State Planning Office stated that "State and local government evaluation . . . indicated no conflicts with existing activities." The Department of Housing and Urban Development indicated that it had no information on the species. The boulder darter was proposed for listing as endangered on November 17, 1987 (52 FR 43921).

Summary of Comments and Recommendations

In the November 17, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and interested parties were contacted and requested to comment. A newspaper notice was published in the Pulaski (Tennessee) Citizen on December 15, 1987. One written comment was received. The U.S. Army Corps of Engineers (Nashville

District) said that they had no programs that would be impacted beyond their normal regulatory programs. They also stated that they felt there were no imminent threats to the species at this time, but they added that the area was within the cotton belt and that the current resurgence in demand for cotton may lead to an increased risk of catastrophic fish kills and chronic pesticide problems.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the boulder darter should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the boulder darter (*Etheostoma* sp.) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The boulder darter is presently known to occur in disjunct segments on about 23 miles (43 kilometers) of the Elk River (from river mile 29.7 to 52.5) in Giles County, Tennessee, and Limestone County, Alabama, and about 2 miles (3 kilometers) total in two Elk River tributaries (Richland Creek and Indian Creek) in Giles County, Tennessee (O'Bara and Etnier 1987). The present distribution represents a substantial reduction over its historically known range, and is only a fraction of the fish's likely range prior to the construction of impoundments on the Elk and Tennessee Rivers.

Historically the fish has been collected in the Elk River upstream as far as river mile 90 in Lincoln County, Tennessee. Recent surveys of the Elk River in Lincoln County have failed to recollect the fish in the county even though suitable habitat is still present (O'Bara and Etnier 1987). It is believed this population segment was extirpated and has not been repopulated because of the cold water releases from Tims Ford Reservoir. Historical records of this species also exist for Shoal Creek, Lauderdale County, Alabama. Sampling in this creek during the summer of 1983 and the fall of 1986 failed to verify presence of the fish. It is believed the Shoal Creek population was lost due to flooding of lower Shoal Creek by Wilson Dam and due to pollution from an upstream industrial complex. Although this discharge has been substantially improved, the boulder darter apparently has not recolonized the area.

Although data are lacking, it is believed, based on the historical availability of suitable habitat, that the boulder darter once inhabited the Tennessee River and the lower portion of some Tennessee River tributaries in the southern bend area of the Tennessee River from the Paint Rock River downstream to at least Shoal Creek (Dr. David Etnier, personal communications, 1987). These main Tennessee River and tributary populations would have been eliminated when the Tennessee River impoundments (Wheeler and Wilson Dams) inundated the preferred habitat of the fish.

No water impoundments are planned for the Elk River in the area presently occupied by the species. However, other factors, such as increased levels of siltation from major land use changes, improper pesticide use, toxic chemical spills, and/or uncontrolled mining of phosphate in the watershed, could further threaten the species in the short river reaches and limited habitat it now occupies.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The specific areas inhabited by the species are presently unknown to the general public. As a result, overutilization of the species has not been a problem. However, there is the potential for vandalism to become a problem because of publicity associated with listing.

C. *Disease or predation.* Although the boulder darter is undoubtedly consumed by predators, there is no evidence that predation is a threat to the species.

D. *The inadequacy of existing regulatory mechanisms.* The States of Tennessee and Alabama prohibit taking wildlife and fish for scientific purposes without a State collecting permit. However, these State laws do not protect the species' habitat from the potential impacts of Federal actions. Federal listing will provide the species additional protection under the Endangered Species Act by requiring a Federal permit to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The boulder darter requires deep (greater than 2 feet or 0.6 meters), fast-moving water over boulder habitat. Because the Elk River's substrate is primarily sand and gravel and many river reaches consist of long, slow pools, the boulder darter's required habitat is extremely limited. The scarcity of this fish's preferred habitat further restricts the species' range and increases its vulnerability to habitat alteration at these sites.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list the boulder darter (*Etheostoma* sp.) as an endangered species. The species presently ranges over only about 25 river miles (46 kilometers), and within this river reach, it is restricted to very specific habitat areas that are scarce. This restricted range and habitat limitation makes the species vulnerable to extinction. Therefore, the listing of this species as endangered, as opposed to threatened, is most appropriate. See the following section for reasons why critical habitat is not being designated.

Critical Habitat

Section 7(a)(2) of the Endangered Species Act, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Section 4(a)(3) requires that critical habitat be designated, to the maximum extent prudent and determinable, concurrent with the determination that a species is endangered or threatened. The Service finds that a determination of critical habitat for the boulder darter is not prudent at this time. Such a determination would result in no known benefit to the species. As part of the development of and subsequent to the publication of the proposed rule, Federal agencies were notified of the boulder darter's distribution and requested to provide data on proposed Federal projects that might adversely affect the species. No projects were identified. Should any potential adverse effects arise from future projects, the involved Federal agencies will already have the species' distributional data needed to determine if the species may be impacted by their action. The listing of a species and the publicity that arises creates the potential for vandalism. Through the designation of critical habitat and the requirement for maps and specific habitat descriptions, the threat to this species from vandalism would increase. Protection of this

species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard of the Act. Therefore, it would not be prudent to determine critical habitat for the boulder darter at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has notified Federal agencies that may have programs that affect the species. As a result of this notification, no Federal agencies identified any current programs that may impact the boulder darter. However, Federal activities that could occur in the future and impact the species include, but are not limited to, the carrying out of or the issuance of permits for hydroelectric facilities construction, reservoir construction, stream alteration, wastewater facility development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell or offer it for sale in interstate or foreign commerce. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

O'Bara, C.J., and D.A. Etnier. 1987. Status survey of the boulder darter. Final report submitted to U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, NC. May 1987. 13 pp.

Author

The primary author of this final rule is Richard G. Biggins, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Treatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
*	*	*	*	*	*		
Darter, boulder (=Elk River)	*Etheostoma (Nothonotus)* sp.	U.S.A. (TN,AL)	Entire	E	322	NA	NA
*	*	*	*	*	*		

Dated: August 11, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-19943 Filed 8-31-88; 8:45 am]

BILLING CODE 4310-55-M

federal register

Thursday
September 1, 1988

Part VII

Federal Reserve System

Barnett Banks, Inc.; Proposed Acquisition of Savings and Loan Association; Notice

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Proposed Acquisition of Savings and Loan Association

Barnett Banks, Inc., Jacksonville, Florida, has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the voting shares of First Federal Savings Bank Loan Association, Summerville, Georgia.

The Board previously has determined by order that the operation of a thrift institution (including a savings and loan association) is closely related to banking, but not, as a general matter, a proper incident to banking under section 4(c)(8) of the Act. *See e.g., Citicorp*, 72 Federal Reserve Bulletin 724 (1986). However, the Board has approved several proposals involving the acquisition of failing thrift institutions on the basis that any adverse effects would be overcome by the public benefits of preserving the failing thrift institutions. *Citicorp, supra; The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 462 (1985).

Interested persons may express their views in writing on the question whether consummation of the proposed acquisition can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

In view of the request by the Federal Home Loan Bank Board that the Board act promptly on this application in light of the financial condition of Peoples, the comment period has been shortened to fifteen days.

Accordingly, comments regarding this application must be submitted in writing and must be received at the offices of William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Room 2223, Eccles Building, 20th Street and Constitution Avenue, NW., Washington, DC 20551, not later than 5:00 p.m. on Thursday, September 15, 1988. This application is available for immediate inspection at the offices of the Board of Governors and the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, August 30, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20087 Filed 8-31-88; 11:36 am]

BILLING CODE 6210-01-M

federal register

Thursday
September 1, 1988

Part VIII

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1421
Grains and Similarly Handled Commodities; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, without change, that portion of a proposed rule published on August 10, 1988 (53 FR 30068) which affects 7 CFR Part 1421. These amendments set forth which Commodity Credit Corporation (CCC) price support loans may, on maturity, be extended by producers. These amendments are made in order to provide commodity market stability and to provide affected producers with notice of CCC's determinations with respect to the extension of such loans.

EFFECTIVE DATE: This final rule shall become effective August 30, 1988.

ADDRESS: Inquiries concerning this final rule should be directed to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Final Regulatory Impact Analysis describing the options considered in developing this final rule is available on request from Thomas VonGarlem at this address.

FOR FURTHER INFORMATION CONTACT: Thomas VonGarlem (202) 447–6761.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "major".

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

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchasers, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule. Therefore, the Regulatory Flexibility Act is not applicable.

Milton Hertz, Executive Vice President, Commodity Credit Corporation hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities because the action taken in this rule will reduce uncertainty in the operation of the program and will have the effect of stabilizing commodity supply and demand situations.

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

I. Summary of Final Regulatory Impact Analysis

Need for Action

The purposes and objectives of the price support loan programs are to comply with statutory requirements, provide price and income protection to producers, provide stability to the commodity markets and provide affected producers with notice of CCC's determinations.

CCC makes available price support loans to eligible producers who comply with applicable program requirements. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act) and the CCC Charter Act, as amended (the CCC Charter Act). The terms and conditions of the loans are set forth in the loan agreement in accordance with 7 CFR Part 1421; these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made unless extended by CCC.

In accordance with section 110 of the 1949 Act, CCC may make available Farmer-Owned Reserve (FOR) extended price support loans to producers who have specified maturing wheat and feed grain price support loans. CCC previously has offered extensions, at the producer's option based upon then-existing market conditions. The authority to extend FOR loans under the 1949 Act was amended in 1985.

Options Considered with Selected Options Designated

Option 1 (Selected)

(a) 1987 and subsequent crop price support regular loans for feed grains, rice, soybeans and wheat will not be extended at maturity.

(b) 1985- and 1986-crop extended loans of wheat, barley, oats and soybeans will not be extended at maturity.

(c) 1985- and 1986-crop corn and sorghum extended loans which mature on March 31, 1988 through and including December 31, 1988, may be extended at maturity for 1 year.

(d) 1984-crop FOR loans which mature on March 31, 1988 through and including December 31, 1988, may be extended at maturity for 1 year.

(e) 1983 and prior crop year FOR loans will not be extended at maturity.

(f) Special Producer Storage loans will not be extended at maturity and regulations supporting such loans will be deleted.

(g) 1987 crops of wheat and feed grains will not be permitted to enter the FOR.

Option 2

(a) 1987 and subsequent crop price support regular loans for feed grains, rice, soybeans and wheat may be extended at maturity for 1 year.

(b) 1985- and 1986-crop loans of wheat, barley, oats and soybeans may be extended at maturity for 1 year.

(c) 1985- and 1986-crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988, may be extended to maturity for 1 1 year.

(d) 1984-crop FOR loans which mature on March 31, 1988 through and including December 31, 1988, may be extended at maturity for 1 year.

(e) 1983 and prior crop year FOR loans may be extended at maturity for 1 year.

(f) Special Producer Storage loans may be extended at maturity for 1 year.

(g) 1987 crops of wheat and feed grains will not be permitted to enter the FOR.

Legislative Basis for Actions

The 1949 Act and the CCC Charter Act.

Expected Impacts

A. Introduction

Prior to the 1988 drought, demand was expected to exceed production, due in large part to high export demand. The supply and demand situation as of August 1988 shows a considerable tightening of stocks for wheat, feed grains and soybeans due to the 1988 drought-reduced crops and continued large disappearance. World grain stocks as a percent of total grain use as of the end of the 1988/89 season are now projected to be the lowest level since 1975; U.S. stocks compared with use will be the lowest since 1981. For example,

corn stocks on September 1, 1989, are expected to be 1,576 million bushels, down 64 percent from September 1, 1988. In the 1988/89 corn marketing year, total use is expected to exceed 1988 production by about 2.8 billion bushels, necessitating market access to CCC-owned grain and grain pledged as collateral for prior crop loans in order to meet market needs. Similarly, wheat stocks are projected to be 597 million bushels on June 1, 1989, down 53 percent from June 1, 1988. These sharp reductions in stocks have caused large increases in prices of food and feed grains. Cash market corn prices are up 30 percent. Since May, wheat is up 25 percent, and soybeans are up 20 percent.

The expected impacts with respect to rice is minimal or none due to the marketing loan program. Accordingly, this analysis does not address rice. A final regulatory impact analysis has been prepared with respect to the 1988 Wheat, Feed Grain, Rice and Soybean CCC Programs.

II. Background of Proposed Changes to 7 CFR Part 1421

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. *See* 7 CFR 1421.1–1421.32 for feed grain, rice, soybean and wheat price support loans and purchase agreements (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act, CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred to as Farmer-Owned Reserve (FOR) Loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740–54 (53 FR 11,239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 395 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1.06 billion bushels of corn, 54 million bushels of sorghum and 50 million bushels of barley are in the FOR feed gran reserve. Corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949 Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, the loan collateral would be forfeited to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Charter Act, as amended. The terms and conditions of these loans are set forth in the loan agreement. See 7 CFR 1421.900–1421.917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain other loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture to CCC of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court of the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 *et seq.* Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notices which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculture on July 20, 1971 (*see* 36 FR 13804), which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since proposed rulemaking actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments were requested with respect to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months. Section 1421.6 would also be amended to provide that 1985 and 1986 crop loans of wheat, barley, oats, and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year. The proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide that 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

The proposed rule would also amend the regulations at 7 CFR 1421.900–1421.917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

> The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agricultural Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing a matured grain reserve loan as collateral for a loan obtained under the new program.

50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, the proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Special Producer Storage Loans will not be extended.

The quantities of outstanding CCC loan collateral as of August 17, 1988 which would be affected by the proposed amendments are as follows:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats	Soybeans
Regular Loans:						
1985	6	*76	*4	2	0	2
1986	23	*454	*27	11	0	7
1987	29	532	11	12	0	44
Farmer-Owned Reserve (FOR) Loans:						
1983 & Prior [1]	166	0	0	3	0	.....
1984	*71	*281	*11	*14	*0	.....
1985 [2]	158	781	43	33	0	
Special Producer Storage (SPSL) Loans	0	110	17	25	1	.....

(Asterisks denote loans which would be available for extension.)
[1] These loans do not begin to mature until 1990.
[2] These loans do not begin to mature until 1989.

Basis For CCC's Actions Regarding CCC Price Support Loans

In January and March 1988, CCC announced that certain CCC price support loans would be extended and that certain loans would not be extended. CCC also announced that 1987 crops of wheat and feed grains would not be allowed entry into the FOR. These decisions were based upon market conditions which existed at that time. Those decisions were based upon expected 1988 normal crop production. In making these determinations, CCC took in account the impact the decisions would have on producers of wheat, feed grains and soybeans as well as on the ultimate users of these products.

At that time, excessive surpluses of these crops existed as the result of overproduction in previous years. These excessive surpluses had occurred due in larger part to the loss of export markets from 1981–1985. In order to reduce these excessive surpluses, the Food Security Act of 1985 amended the 1949 Act to mandate acreage reduction programs for wheat and feed grains and also mandated the use of export enhancement programs. Accordingly, CCC's decisions in January and March 1988 were based in large part upon a concern to maintain regained export markets. The U.S. share of export markets for wheat had increased from 29 percent in the 1985–1986 marketing year to 42 percent in the 1987–1988 marketing year, still below the 1981–1982 marketing year level of 48 percent. With respect to corn, such U.S. share had increased from 58 percent in the 1985–1986 marketing year to 78 percent in 1987–1988 marketing year, still below the 1979–1980 marketing year level of 82 percent. By retaining these markets through the availability of grain from CCC inventory and from free stocks, U.S. producers would be able to market larger quantities of 1988 and subsequent crops. At that time, estimated 1988 crop production was projected to be less than the combined total of 1988 projected uses and would result in sharp declines in both total carryover stocks and free stocks. Accordingly, access to CCC stocks and loan collateral was determined to be necessary.

However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been severely reduced by the drought conditions which exist throughout major agricultural regions of the United States. For example, on May 10, 1988 the estimated 1988 production of corn was 7.3 billion bushels. These estimates have declined to 5.2 billion bushels on July 12, 1988, and to 4.48 billion bushels on August 11, 1988. Thus, at this time, even greater accessibility to CCC inventory and loan collateral is necessary to meet demand than previously was determined to exist in January and March 1988. Similarly estimated wheat production has fallen from 2.17 billion bushels to 1.82 billion bushels. While soybean production has fallen from 1.88 billion bushels in May 1988 to 1.47 billion bushels in August 1988.

The decrease in feed grain and soybean production, together with the reduction in other feed supplies, has caused significant and unexpected increases in feed prices for livestock and poultry producers and has also resulted in the unavailability of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks which has adversely affected producers' income.

The United States' supply of wheat has also been reduced due to the 1988 drought. Coupled with the expansion of U.S. export markets during the past year, the drought has resulted in the smallest supply of U.S. wheat in nearly a decade. Durum wheat production was

reduced 41 percent from 1987, while other spring wheat production is down 53 percent. Similar reductions have occurred as a result of the drought in 1988 oat and barley production. Barley production is down 45 percent and oat production, also down 45 percent, will be the lowest since 1866. Accordingly, substantial quantities of oats will be imported into the U.S. during the next year.

In summary, early 1988 estimates showed that the 1988 use of wheat, feed grains and soybeans would exceed 1988 production thereby necessitating access to CCC inventory and CCC loan collateral. The effects of the 1988 drought further necessitate such accessibility.

In order to ensure orderly marketing of these commodities, including 1988 production, it has been determined that some crop year loans with 1988 maturity dates will be extended until 1989. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend certain other loans, CCC's action will provide: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with very minimal forfeitures to CCC; (2) purchasers, both domestic and foreign, with reliable supplies, and (3) parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer.

Section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grains when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate but not excessive carryover stocks to ensure a reliable supply of the commodities." It is generally accepted that an adequate carryover supply of wheat is .75 —1.0 billion bushels and that an adequate carryover supply of corn is 1.5 —2.0 billion bushels. Sections 107D and 105C of the 1949 Act provide, with respect to wheat and feed grains, respectively, that if the estimated carryover on the first day of the marketing year for a crop will exceed 1 billion bushels for wheat, and 2 billion bushels for corn, acreage reduction programs must be implemented. As of August 29, 1988, ending 1988/89 marketing year wheat stocks are estimated to be 597 million bushels and ending 1988/89 marketing year corn stocks are estimated to be 1.58 billion bushels. Accordingly, assuming that the quantities specified in sections 105C and 107D are adequate carryout quantities, the U.S. will have minimally adequate or less than adequate carryovers of these crops going into the 1989 marketing year. Section 110 of the 1949 Act provides that the FOR program is to be conducted only when wheat and feed grains are in "abundant supply." Such supplies are clearly not abundant and are projected to be below even "adequate carryover" levels. Section 110 also provides that the FOR must be conducted in a manner which does not curtail free market activity. Further entry of grain into the FOR would, by the end of the marketing year, result in record high levels of grain in the FOR and would cause serious market disruptions.

Based upon these estimates, entry of any further crops into the FOR would not only be contrary to market demands but would also violate the provisions of section 110 of the 1949 Act which require that free market activity not be disrupted.

Currently the following quantities are in the FOR as of August 17:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats
1983 and prior	166	0	0	0	0
1984	71	281	11	14	0
1985	158	781	43	33	0
Total	395	1,062	54	50	0

Wheat FOR loans for 1983 and prior crops do not begin to mature until 1990 and 1985 wheat and feed grain FOR loans begin to mature early in 1989. Accordingly, sufficient quantities of FOR loan collateral exist and are in excess of statutory minimums set forth in section 110 of the 1949 Act which must be maintained when prices fall below specified levels.

On July 7, 1988, CCC published in the **Federal Register** a proposed notice of determination with respect to the entry of 1988 crops into the FOR. No comments were received during the 30-day comment period. CCC proposed to allow entry into the FOR only if market prices for wheat and feed grains fell below 140 percent of the respective 1988 crop price support rate and if levels in the FOR fell below 300 million bushels of wheat and 450 million bushels of feed grains. Subsequently, the Disaster Assistance Act of 1988 (the 1988 Act) was enacted principally in response to the 1988 drought. The 1988 Act provided approximately $3.9 billion of disaster related relief measures to producers affected by the 1988 drought and other specified natural disasters.

Included in the 1988 Act were provisions which relate to the FOR Program. Section 303(b) of the 1988 Act provides greater accessibility to FOR stocks which are acquired through the exchange of CCC commodity certificates. Section 303(a) of the 1988 Act provides that, once market prices of a commodity attain the FOR release level during the 1988 marketing year, producers may repay, without penalty, FOR loans during the remainder of such marketing year without regard to market prices. The Joint Explanatory Statement of the Committee of Conference which was prepared in connection with the 1988 Act states as follows:

> The conferees believe that the Secretary should operate the farmer owned reserve in a way that will remove wheat and feed grains from the market during times of surplus supply and increase market supply during times of short supply.
>
> Current farmer owned reserve quantities of wheat and feed grains exceed statutory minimums. The Secretary has previously determined not to allow entry of 1987 crops of wheat and feed grains into the reserve. In making any subsequent determination as to whether to permit entry of 1988 or other crops of such commodities into the reserve, the Secretary should take into consideration the reduced production of 1988 crops of wheat and feed grains as a result of the drought, the size of the farmer owned reserve, the impact of such entry upon the availability of these commodities in the marketplace, including, but not limited to consideration of the impact on the domestic livestock and poultry

industry, the ethanol industry, and export market share.

See 134 Cong. Rec. H. 6474 (daily ed. Aug. 8, 1988).

Accordingly, in addressing the manner in which the FOR is to be conducted, Congress has specifically recognized that statutory FOR minimums have been maintained and that entry of 1987 crops will not be permitted.

Discussion of Comments

In response to that portion of the August 10, 1988 proposed rule which relates to the proposed amendment of 7 CFR Part 1421, 21 letters containing 31 comments were received. In addition, one telephone comment was received. Comments were received from individuals, grain companies, three chairmen of three committees of the National Grain and Feed Association, the Commissioner of Agriculture and the Attorney General of Minnesota, a county ASC committee, producer organizations, a bee company, the Rural Life Office, and a border collie breeder.

The comment received from the bee company was not responsive to the proposed rule since it addressed the issue of honey loan extensions. The proposed rule did not address CCC honey price support loans.

One comment stated that no loan extensions should be granted since a majority of producers no longer have 1987 crop price support loans outstanding and these producers do not have the opportunity to benefit from any extension of such loans.

One comment was received in support of CCC's proposed amendment of 7 CFR Part 1421. This comment noted that, given current production and carryover levels, the market's need for this grain is critical and new or additional extensions would have the effect of artificially isolating these stocks from the market thereby aggravating a tight supply-demand situation.

This commenter noted that extensions would be contrary to the market-oriented intent of the Food Security Act of 1985 and would damage the U.S. status as a reliable exporter. The commenter stated that extensions of some of these loans previously were made by CCC in a time of relative surplus and not for the purpose of creating artificial scarcity in times of relative shortages. The commenter also noted that it will take some time through normal market movements for grain that had been pledged as collateral for maturing loans to be positioned and available for the market. The commenter further noted that CCC's exposure to loan forfeitures would be minimal due to current market conditions.

CCC concurs in the view that it would be inequitable at this time to allow extensions of some 1987 crop loans since not all producers in the southern region of the United States would be able to take advantage of such an extension. As of August 17, 1988, only 6 percent of 1987 wheat and 13 percent of corn price support loans remained outstanding.

CCC also concurs with the analysis provided by the second commenter that any further loan extensions would, in general, result in the loss of U.S. status as a reliable exporter. The views of the commenter are also consistent with the discussion of the basis for CCC's actions previously set forth in this document.

Seven comments suggested that, by allowing loan extensions, more orderly marketing of grain would occur. Three of these comments suggested limiting any extension to six months, one of which suggested that any storage payments which would be made should not be made until the loan is settled.

As noted in the previous discussion of CCC's basis for only extending only certain loans, orderly marketing will occur as a result of this proposed amendment. Further, by extending all loans, CCC would merely delay until next year any possible effect on the market that may occur upon maturity of these loans. Current storage availability and transportation facilities are more than adequate to handle 1988 crop production which is marketed as well as grain which will enter the market from those loans which mature in accordance with their stated maturity dates. No data was provided by any commenter that supported the view that, by extending loans, even for a six month period, any more orderly marketing would occur than if such loans are not extended.

Delaying the payment of storage payments until the loan is settled would not result in orderly marketing making storage payments either in advance or on a delayed basis would merely create a disincentive for a producer to follow market forces when deciding whether or not to market a commodity since the producer would have an artificial incentive to hold the commodity. Further, it is not the purpose of CCC to expend its limited funds for producers to store commodities in times of reduced production and high prices. CCC offers storage payments to producers in certain instances in order to encourage producers to store grain when surpluses exist until the grain can enter the market in situations such as those which have existed throughout 1988.

As noted in the previous discussion of CCC's actions, loan extensions are made available by CCC in times of surplus in order to encourage orderly marketing. Once market prices have exceeded the CCC price support level, the purpose of the CCC price support loan has been attained, i.e., to guarantee a producer a specified minimum price for the commodity. Since the formulation of the price support loan concept over 50 years ago, it has not been an objective of the price support program to ensure that, at the expense of CCC's limited funding authority, producers receive a market price in excess of the price support level. Producers who wish to speculate that prices will continue to remain in excess of the price support level after the maturity of their price support loan may redeem the loan collateral and retain control of the commodity until such time as they wish to market the commodity. In addition, traditional marketing devices, such as contingency markets and forward contracting, are available to producers which will allow producers to take advantage of potentially high future market prices if the producers wish to speculate in the market.

As noted in the discussion in response to the comments which addressed the concern for orderly marketing, market prices exceed current price support levels. Accordingly, producers who wish to speculate that higher prices will occur may redeem their loan collateral and market their commodity at a future date if they so desire.

Five comments suggested that, by allowing loan extensions, stabilized or enhanced market prices would be available to producers.

Four comments expressed concern that the current drought and the recently enacted emergency livestock provisions of the Drought Assistance Act of 1988 should be taken into consideration in making the decision as to whether loan extensions should be authorized. These comments suggest that loan extensions would be warranted due to these events.

Significant decreases in 1988 production of wheat, feed grain and soybeans and other feed supplies have occurred as a result of the 1988 drought. Liquidation of livestock herds and poultry flocks has occurred due to unexpected and significant increases in feed prices and due to the unavailability of feed in some regions of the country. Accordingly, CCC has implemented emergency feed programs in order to alleviate the impact of the drought on these producers. To allow all loans to be extended would create artificial incentives in the market and would only

result in even tighter feed supplies which would further injure livestock and poultry producers. Extensions of all loans would also be contrary to the objectives of the emergency feed programs conducted by CCC, as required by the Disaster Assistance Act of 1988, which provide that CCC will make available to livestock and poultry producers CCC-owned inventory at prices which are below current price support levels.

Five comments were received which stated that announcements of decisions which are made with respect to loan extensions should be made in a more timely manner. Several of these comments noted that the decision to extend July 31, 1988, maturing loans was not made in a manner which allowed producers to take advantage of this option. Two comments also stated that producers whose loans matured earlier in the year were not afforded the same opportunity to extend their loans. Two comments also requested that the comment period be extended.

CCC notifies producers with maturing price support loans of the options available to them with respect to the settlement of their loans. Generally, producers receive actual notice of these options 45 days in advance of maturity. However, an injunction was issued on July 22, 1988 in a lawsuit involving CCC's earlier announcement of certain loan extension and FOR entry decisions. CCC received notice of this injunction on July 26, 1988. As soon as CCC had reviewed the situation presented by the injunction, CCC announced on July 29, 1988, that loans maturing on July 31, 1988 would be extended. This extension was made available in order to provide market stability until CCC could fully determine the actions which were required by the injunction.

In order to provide further stability to commodity markets, CCC published a notice of proposed rulemaking on August 10, 1988 in order to correct any possible procedural deficiencies which may exist concerning its announcement of price support loan extensions and FOR entry. Accordingly, producers have had sufficient notice of its proposed actions.

The comment period for the proposed rule was limited to 15 days in order that a decision regarding these loans could be made prior to their maturity on August 31, 1988. Many purchasers of grain, including livestock and poultry producers, and handlers of grain had made commitments well in advance of the July 22, 1988 injunction. In order to analyze all comments which were received in response to the proposed rule and to reduce market uncertainty and maintain stability, the comment period ended August 25, 1988.

Price support loans which are made available to wheat, feed grain, rice and soybean producers provide that such loans will mature the last day of the ninth month following the month in which the loan application is made. The length of the loan is structured in a manner which will allow grain from one crop to enter the market prior to the harvest of the following crop. By limiting the length of the loan to 9 months, staggered entry of commodities occurs throughout the nation in a manner which corresponds to normal harvesting patterns, i.e., loans in the southern region of the United States mature the earliest and those in the northern region mature the latest. This staggered entry provides for market price stability and for the entry of sufficient stocks into the market in an orderly manner. Accordingly, by further extending price support loans with maturity dates of July 31, and August 31, until September 30, normal marketing and handling patterns will be severely disrupted since 1988 crops will be in the process of being harvested and will be in the process of being placed in storage facilities by producers. Due to the 1988 drought, harvest will begin much earlier than normal in most areas of the country. Accordingly, decisions by CCC regarding July 31, and August 31, 1988 maturing loans must be made prior to August 31, in order to allow producers to make necessary marketing decisions. Further, the decisions which are made by CCC regarding these loans will impact all producers who will be harvesting 1988 crops, and not just producers with maturing CCC loans, since they too must make arrangements concerning the storage, shipment and sale of their crop. Accordingly, good cause exists for not providing a longer comment period since a longer comment period would be impracticable and contrary to the public interest.

Two comments stated that, by extending these loans, the government would incur lower storage costs than by storing grain in commercial storage facilities.

By not extending certain loans, the storage payments which would have been made under such loans would have exceeded any increase in CCC storage and handling costs which may be incurred on any forfeitures that occur as the result of the adoption of the proposed rule.

CCC projects that few if any forfeitures will occur as the result of its proposed amendment to 7 CFR Part 1421 since market prices exceed current price support levels. Approximately 99 percent of all 1987 crop year loan settlements which have occurred from January 29, 1988 through August 17, 1988 have been loan repayments. For all crop year loans which were settled in this period, approximately 93 percent of all loans were repaid. Producers may also use commodity certificates to profitably acquire and market any grain which has been pledged as collateral for any CCC price support loan which has a repayment value per bushel which exceeds current market prices. Further, CCC inventory is continuing to decline and uncommitted wheat stocks will likely be less than 50 million bushels by December 31, 1988 and may well approach zero. Uncommitted CCC corn stocks will likely be less than 200 million bushels by such time. By comparison, the quantities of wheat and corn in CCC inventory as of August 1, 1987, were 808 million and 1.47 billion bushels, respectively.

Five comments were received with respect to the effect that the proposed rule has on litigation currently pending which involves CCC's earlier decisions not to allow extension of certain crop year loans or to allow entry into the FOR.

It is CCC's position that the injunction issued on July 22, 1988 prohibited the implementation of two intra-agency notices. Absent these notices, all loans maturing in 1988 would not be extended and entry into the FOR would not be permitted. The injunction did not prohibit the use of other existing authority of CCC and did not preclude CCC from conducting a rulemaking activity in order to remove any possible procedural deficiency which may exist.

One comment merely stated that farmers are under stress and that actions should not be taken which give grain companies an additional advantage over them.

The proposed amendments to 7 CFR Part 1421 are not intended to provide any advantage to grain companies or to any other party. The amendments are intended to provide adequate supplies of grain in the market without imposing an artificial barrier to the market such as through the payment of unnecessary storage payments to producers.

One comment agreed with the proposal of giving producers actual notice by mail of any future extensions. The commenter also stated that this notice should be given at least 14 days prior to loan maturity.

As noted previously, it is the current policy of CCC to provide sufficient and timely notice to producers of offered loan extensions. Since CCC has historically provided actual notice

approximately 45 days in advance of maturity, the suggestion that such notice be made at least 14 days in advance has been rejected.

One comment stated that the Special Producer Storage Loan Program should not be terminated since it could be used in the future if crop surpluses occur. One commenter agreed with the proposal, noting that the continued use of the program contravenes the intent of the Food Security Act of 1985. This commenter also stated that, for the same reasons previously set forth in support of CCC's proposal to not extend certain loans, that this program should also be terminated.

As noted previously, the Special Producer Storage Loan Program was established in 1985 since CCC could not have FOR loans with a term in excess of 5 years. At the then prevailing market prices, producers would have forfeited large quantities of the maturing FOR loan collateral. In order to provide greater flexibility to producers by allowing producers to retain control of this grain, the Special Producer Storage Loan Program was established. Subsequently, the Food Security Act of 1985 amended section 110 of the 1949 Act to remove the restriction that FOR loans cannot be for a term of longer than 5 years. Accordingly, the need for this program no longer exists.

Two comments stated that the proposal to delete from existing regulations the authority for CCC to extend 1987 and subsequent crops should not be adopted since it is too premature to determine whether future extensions are warranted.

Extensions of CCC price support loans have been made available when large surpluses of commodities exist. The purpose of these extensions has been to allow producers to retain control of the loan collateral beyond the initial loan maturity date in lieu of forfeiting the collateral. When determining whether to offer such extensions, CCC takes into consideration whether it is likely that prices will reach the point that loan repayments are likely to occur and the market demand for the commodity. Extensions of 1984–1986 crop year loans were authorized due to depressed market prices, excessive supplies, tight storage situations and large CCC inventories. These conditions do not currently exist. Further, due to the large reduction in 1988 production, these situations are not projected to occur in the 1988/89 marketing year.

In order to remove the possibility of encountering any further concerns with respect to the procedural manner in which loan extension determinations are made, CCC has determined that 7 CFR Part 1421 will specifically provide that no extensions will be made. However, in the event market and storage conditions and CCC inventory levels change which would warrant the extension of subsequent crop year loans, CCC would still be authorized to take such action. But, in implementing such a decision, CCC would be required to publish in the **Federal Register** an amendment to 7 CFR Part 1421 in order to effectuate any such extension. Therefore, all interested parties would receive sufficient notice of such change.

One comment stated that the proposed rule should set forth standards which would be used to determine when loan extensions would be granted or entry into the FOR would be permitted.

When determining whether to offer loan extensions or to allow entry into the FOR, CCC must take into consideration conditions existing at that time. A myriad of factors must be considered. These factors include existing and projected market prices; foreign and domestic market demands; weather conditions; livestock, ethanol, and poultry industry concerns; storage capacities; foreign agricultural subsidy actions; humanitarian and domestic emergency relief measures; and CCC budgetary restrictions. CCC must also take into consideration statutory requirements applicable to determinations involving wheat and feed grain acreage reduction programs which take into consideration projected carryover supplies. Accordingly, since these factors as well as other factors are continually changing, the suggestion that specific standards be set forth in 7 CFR Part 1421 is rejected.

This commenter also noted that factors other than the statutory FOR minimums which are set forth in section 110 of the 1949 Act must be taken into consideration when allowing entry into the FOR. The commenter also stated that, by allowing the extension of 1984 crop FOR loans only, quantities in the FOR will fall below the statutory minimum. The commenter further stated that since Congress has provided in the Disaster Assistance Act of 1988 for the release of FOR grain without penalty any time during the 1988 marketing year if market prices attain the release level during such year, Congress has indicated the manner in which private stocks should enter the market.

This commenter also noted that if the Secretary perceives that an emergency situation exists which requires the release of FOR stocks, such authority is already provided for in section 110 of the 1949 Act.

As noted in the previous discussion of the basis for CCC's actions regarding price support loan extensions and entry into the FOR, section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grains when such commodities are in abundant supply, extend the time for their orderly marketing, and provide for adequate, but not excessive, carryover stocks to ensure a reliable supply of the commodities." CCC has always taken these and other factors into consideration when determining whether to allow entry into the FOR. However, it should be noted that section 110 of the 1949 Act provides that such a program shall be available when "such commodities are in abundant supply." Current supplies of wheat and feed grains have been significantly reduced by the 1988 drought. For the purposes of determining adequate carryover levels in carrying out domestic price support programs and related activities, ending 1988/89 marketing year stocks will be minimally adequate or below such levels. Projected ending wheat stocks total 597 million bushels, with 395 million bushels currently in the FOR. Projected ending corn stocks total 1.58 billion bushels, with 1.1 billion bushels currently in the FOR. Approximately 65–70 percent of both wheat and feed grain carryover stocks are now in the FOR. These about equal the highest shares of ending stocks accounted for by FOR loan collateral since the FOR was first implemented in 1977. By comparison, ending 1987/88 corn stocks were 4.35 billion bushels with 1.2 billion in the FOR or approximately 27 percent. As noted before, additional entry into the FOR would result in a record high share of ending stocks being in the form of FOR loan collateral. Allowing further entry into the FOR will severely disrupt free market activity contrary to the provisions of section 110 of the 1949 Act which provide that the FOR must be implemented in a manner which does not "unduly depress, manipulate or curtail the free market."

The commenter also stated that entry into the FOR must be allowed in order to fulfill Congressional policies subject to the upper limits set forth in section 110 of the 1949 Act and, when FOR amounts fall below the minimum levels and "prices are below release level", incentives must be offered to encourage participation in the FOR.

For the immediately foregoing reasons, entry of additional quantities of wheat and feed grains would not be in accordance with the provisions of section 110 of the 1949 Act and would,

therefore, be contrary to Congressional policy.

The commenter also stated that levels in the FOR will fall below statutory minimums if the proposed rule is adopted.

CCC has always maintained levels in the FOR which are in excess of statutory minimum requirements. Current FOR levels are 395 million bushels for wheat and 1.06 billion bushels for corn; 166 million bushels of 1980–1983 FOR wheat loans do not begin to mature until 1990, and 158 million bushels of 1985 crop wheat loans do not begin to mature until 1989. The 1985 corn FOR loans also do not begin to mature until early 1989 and total 781 billion bushels. Accordingly, the commenter's conclusion that insufficient FOR levels will result is simply in error. As provided in the proposed amendment to 7 CFR 1421.741, additional extensions of 1984 and 1985 may be offered. Extensions of 1980–1983 crop wheat FOR loans are not provided for since the amendments that were made to section 110 of the 1949 Act by the Food Security Act expire with the 1990 crop. Decisions regarding the 1990 crop year will be made at that time in accordance with then existing statutory requirements.

The commenter also stated that due to section 303 of the "Drought Relief Bill" (sic) "there is no reason to doubt that the FOR will draw down even further." The commenter provides no economic support for this statement.

Section 303(a) of the Drought Assistance Act of 1988 provides that, with respect to the 1988 marketing years only, producers may repay FOR loans throughout such year without the payment of any penalty once market prices reach the FOR release level. The 1988 marketing year FOR release level is $4.23 per bushel for wheat and $2.93 per bushel for corn. The most recent USDA World Outlook Board projections show for 1988/89 season average price of $3.45–$3.95 for wheat and $2.30–$2.70 for corn. Thus, market prices may not reach release levels, if at all, for some time. Further, given the incentive of receiving storage payments there is no assurance that producers will avail themselves of this option in any event.

The commenter also stated that since the action proposed in January was to handle a surplus and the action proposed in August was in response to a drought, the justification provided for in the proposed rule was a "mere sham."

As more fully discussed throughout this document, the initial determinations were based upon assumptions that 1988 demand would exceed 1988 production. This situation was obviously worsened due to the 1988 drought. Accordingly, the fundamental basis for this action still remains the same, i.e., the continued availability of sufficient stocks to meet current export and domestic demand.

The commenter stated that if the Secretary perceives that an emergency exists which requires release of FOR stocks, the Secretary may, in accordance with section 110(d) of the 1949 Act, call FOR loans prior to maturity after reporting the determination and reasons to the President and to the Congress.

Given current supplies, the Secretary may, at some subsequent date, have to resort to calling non-maturing loans. However, the proposed amendments affect maturing loans and not non-maturing loans. As discussed above, allowing further entry into the FOR at this time would be contrary to the provisions of section 110 of the 1949 Act since free markets would be unduly disrupted.

Also, as noted by another commenter, delivery of grain into market accessible positions cannot be done immediately upon loan maturity. Accordingly, by allowing entry into the FOR and, in the near future, calling FOR loans would not necessarily result in timely access to these stocks. Also, by not allowing further entry of grain into the FOR, the possibility of the occurrence of emergency conditions which would necessitate the calling of other FOR loans will be reduced.

List of Subjects in 7 CFR Part 1421

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

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

PART 1421—[AMENDED]

1. The authority citation for Part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1972 (15 U.S.C. 714b and 714c); secs. 101, 101A, 105C, 107D, 108, 110, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 99 Stat. 1419, as amended, 1395, as amended, 1383, as amended, 1439, as amended, 92 Stat. 951, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446, 1447, 1421, 1423, and 1425).

2. 7 CFR 1421.6 is amended by revising paragraph (a)(1)(i) and adding paragraph (c) to read as follows:

§ 1421.6 Maturity and expiration dates.

(a) * * *

(1) * * *

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

* * * * *

(c) *Extension of loans.* (1) Notwithstanding any other provision of this part, all 1987 and prior crop year loans which have been made available to eligible producers in accordance with the provisions of this part shall not be extended upon maturity except that 1985 and 1986 crop corn and sorghum loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year.

(2) With respect to all commodities, 1988 and subsequent crop year loans may not be extended upon maturity.

3. 7 CFR 1421.741 is revised to read as follows:

§ 1421.741 Length of reserve agreements.

The length of reserve agreements shall be determined and announced by the Executive Vice President, CCC, based upon market conditions which exist at the time such agreements are executed by CCC. Such agreements may be extended by CCC, at the producer's option, upon maturity if CCC determines that an extension is warranted based upon existing market conditions. 1983 and prior crop year loans may not be extended. 1984 crop year loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year. Producers having 1984 and 1985 crop year loans will be notified by mail of any extension or additional extension option which may be made available by CCC. Determinations with respect to the entry of eligible grain from other crop years into the Grain Reserve Program will be announced by CCC by the publication of a final notice of determination in the **Federal Register.**

4. 7 CFR 1421.900 is revised to read as follows:

§ 1421.900 General statement.

Special Producer Storage Loan Program loans shall not be extended upon maturity.

§§ 1421.901 through 1421.917 [Removed]

5. 7 CFR 1421.901 through 1421.917 are removed.

Signed at Washington, DC on August 30, 1988.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

33801-34012.....1

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 30, 1988

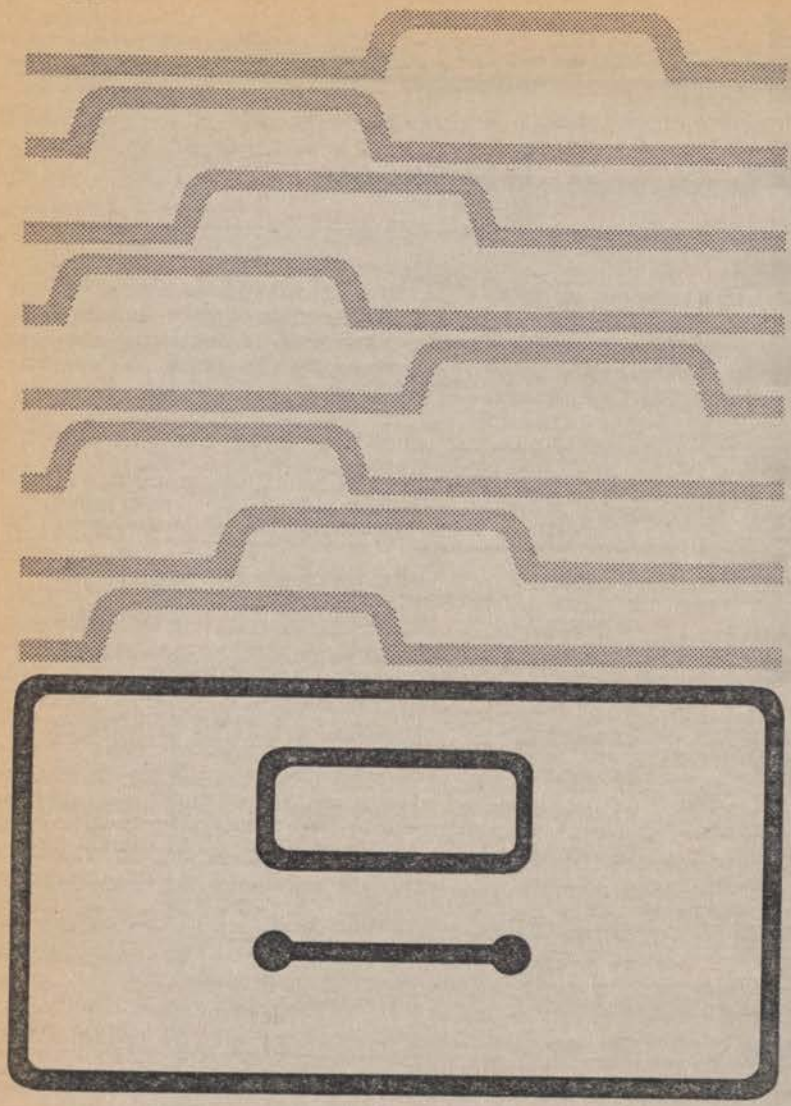
TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1988

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
September 1	September 16	October 3	October 17	October 31	November 30
September 2	September 19	October 3	October 17	November 1	December 1
September 6	September 21	October 6	October 21	November 7	December 5
September 7	September 22	October 7	October 24	November 7	December 6
September 8	September 23	October 11	October 24	November 7	December 7
September 9	September 26	October 11	October 24	November 8	December 8
September 12	September 27	October 12	October 27	November 14	December 12
September 13	September 28	October 13	October 28	November 14	December 12
September 14	September 29	October 14	October 31	November 14	December 13
September 15	September 30	October 17	October 31	November 14	December 14
September 16	October 3	October 17	October 31	November 15	December 15
September 19	October 4	October 19	November 3	November 18	December 19
September 20	October 5	October 20	November 4	November 21	December 19
September 21	October 6	October 21	November 7	November 21	December 20
September 22	October 7	October 24	November 7	November 21	December 21
September 23	October 11	October 24	November 7	November 22	December 22
September 26	October 11	October 26	November 10	November 25	December 27
September 27	October 12	October 27	November 14	November 28	December 27
September 28	October 13	October 28	November 14	November 28	December 27
September 29	October 14	October 31	November 14	November 28	December 28
September 30	October 17	October 31	November 14	November 29	December 29



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1986
SUPPLEMENT: Revised January 1, 1988

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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