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Monday
October 31, 1988

Briefing on How To Use the Federal Register—
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WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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Presidential Documents

Title 3—

The President

Proclamation 5891 of October 27, 1988

National Adult Immunization Awareness Week, 1988

By the President of the United States of America

A Proclamation

America does well to hold a national week of observance to remind citizens that the need for immunization does not stop with childhood. Vaccine-preventable diseases continue to kill grown-ups in our Nation; as many as 70,000 adults die each year because they do not take advantage of vaccines for influenza, pneumococcal pneumonia, hepatitis B, tetanus, and other preventable infectious diseases. Even among people at greatest risk for complications—the elderly and the chronically ill—fewer than one in five routinely receive annual influenza vaccination and fewer than one in 10 have been vaccinated against pneumococcal pneumonia.

Immunization with safe and effective vaccines can greatly reduce the tragic loss of life and reduce the massive costs associated with health care. The Surgeon General of the United States has repeatedly urged adults to use appropriate preventive health-care practices, including vaccination for diseases preventable through immunization. We can all do our share in making sure we ourselves and members of our families know about and receive immunization, and that our neighbors and communities have the same opportunity.

In recognition of the importance of adult immunization and of the benefits of public awareness, the Congress, by Senate Joint Resolution 335, has designated the week beginning October 23, 1988, as "National Adult Immunization Awareness Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 23, 1988, as National Adult Immunization Awareness Week. I call upon all government agencies and the people of the United States to observe this week with appropriate activities.

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

Ronald Reagan

[FR Doc. 88-25302
Filed 10-28-88; 10:49 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 725 and 726

Burley Tobacco; Marketing Quotas and Acreage Allotments

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

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations found at 7 CFR Parts 725 and 726. These changes are necessary to implement provisions of the Disaster Assistance Act of 1988 with respect to: (1) Providing for the crediting of undermarketings of flue-cured or burley tobacco effective farm marketing quota when disaster payments are made on the 1988 crop of tobacco; (2) determination of 1989 effective burley tobacco marketing quotas when the 1988 crop of burley tobacco produced on a farm is less than the farm's effective farm marketing quota for 1988 because of natural disaster conditions and; (3) the lease and transfer of burley tobacco marketing quotas after July 1 from a farm that has suffered a loss as the result of a natural disaster condition.

DATES: Comments must be received on or before November 30, 1988, in order to be assured consideration.

EFFECTIVE DATE: October 31, 1988.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. Written comments must be received by November 30, 1988, to be assured consideration. All written submissions made pursuant to this notice will be made available for public inspection in room 5750–South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis Daniels, Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

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

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

Producers of flue-cured and burley tobacco need to be informed of the provisions of this rule as soon as possible. Producers of burley tobacco must make decisions regarding the lease and transfer of burley tobacco farm marketing quotas because of existing natural disaster conditions. Producers of flue-cured and burley tobacco must make decisions regarding disaster payments that may be made on farms eligible to receive disaster payments in accordance with Part 1477 of this title because the acceptance of disaster payments on eligible flue-cured and burley tobacco farms will affect the manner in which the 1988 undermarketings of the effective farm marketing quota are determined.

The 1988 undermarketings may affect the 1989 effective farm marketing quota. Accordingly, it has been determined that this interim rule shall become effective upon publication in the **Federal Register** without prior opportunity for public comment. However, the public is invited to comment on this interim rule for a period of 30 days after publication in the **Federal Register**. A final document discussing comments received and any amendments to this interim rule which may be considered necessary will be published in the **Federal Register** as soon as possible.

Discussion of Changes

Sections 317 and 319 of the Agricultural Adjustment Act of 1938, as amended ("the 1938 Act"), provide the manner in which undermarketings of burley and flue-cured poundage quotas are determined. This interim rule amends the regulations found at 7 CFR Parts 725 and 726 to implement the provisions of section 203 of the Disaster Assistance Act of 1988 (the "1988 Act") which changed the manner in which undermarketings are determined for the 1988 crop only, when a disaster payment is made with respect to a 1988 crop of burley or flue-cured tobacco. Under the amended regulations, the undermarketings of the 1988 crop of burley or flue-cured tobacco that otherwise could be claimed shall be reduced by the number of pounds for which a disaster payment was made on such 1988 crop of tobacco.

For burley tobacco, section 304 of the 1988 Act authorizes an increase in the 1989 effective undermarketings from that previously authorized if producers on a farm have undermarketed the farm's 1988 effective farm marketing quota due to a natural disaster condition. Previously, under the provisions of the 1938 Act, the effective undermarketings for burley tobacco could not exceed the sum of the 1988 basic farm marketing quota and any quota leased to the farm in 1988. This interim rule amends the regulations found at 7 CFR Part 726 to provide that the 1989 effective undermarketings for qualifying burley tobacco farms may not exceed the sum of the pounds of quota leased to the farm in 1988 and 125

percent of the 1988 basic farm marketing quota.

This interim rule amends further the regulations at 7 CFR Part 726 to implement the provisions of section 304 of the 1988 Act which amended section 319 of the 1938 Act with respect to the 1988 and subsequent crops of burley tobacco to authorize the lease and transfer of burley tobacco marketing quota after July 1 under certain natural disaster conditions. This interim rule provides that the burley tobacco marketing quota which is assigned to a farm may be leased and transferred from such farm after July 1 if: (1) The planted acreage of burley tobacco is determined to be sufficient to produce a quantity of tobacco equal to the effective farm marketing quota under average conditions; and (2) the farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a natural disaster. Any such lease and transfer of burley tobacco marketing quota may be made to any other eligible farm within the same State where the transferring farm is located administratively.

The quantity of a burley tobacco marketing quota which may be leased and transferred to an eligible farm under this rule is limited to an amount which is required to market the current year's crop of burley tobacco on the receiving farm.

Lists of Subjects in 7 CFR Part 725 and 726

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Interim Rule

PARTS 725 AND 726—[AMENDED]

Accordingly, 7 CFR Parts 725 and 726 are amended as follows:

1. In Part 725:

The authority citation is revised to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316, 316A, 317, 363 372–375, 377 and 378 of the Agricultural Adjustment Act of 1938, as amended: 52 Stat. 38, as amended, 47, as amended, 48, as amended; 96 Stat. 215; 75 Stat. 469, as amended; 96 Stat. 205; 79 Stat. 66, as amended; 52 Stat. 63, as amended, 65, as amended; 66, as amended, 70 Stat. 206, as amended, 72 Stat 995, as amended; (7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b 1314b–1, 1314c, 1363, 1372–75, 1377, 1378); sec. 401 of the Agricultural Adjustment Act of 1949, as amended; 63 Stat 1054, as amended (7 U.S.C 1421); Pub. L. 100–387

2. Section 725.51 is amended by revising paragraph (qq) as follows:

§ 725.51 Definitions.

* * * * *

(qq) *Undermarketings.* The number of pounds by which the effective farm marketing quota is more than the number of pounds marketed. However, with respect to undermarketings of the 1988 crop, undermarketings are the number of pounds by which the effective farm marketing quota is more than the sum of the number of pounds marketed and the number of pounds for which a disaster payment was made on the 1988 crop of tobacco under Part 1477 of this title.

* * * * *

3. In Part 726:

The authority citation is revised to read as follows:

Authority: Sec. 301, 313, 314, 314A, 316B, 318, 319, 363, 372–375, 377, and 378 of the Agricultural Adjustment Act of 1938, as amended: 52 Stat. 38, as amended, 47, as amended, 48, as amended; 96 Stat. 210, 215; 79 Stat. 469, as amended, 79 Stat. 63, as amended, 65, as amended, 66, as amended; 70 Stat. 206, as amended; 72 Stat. 995, as amended; (7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314e, 1363, 1372–75, 1377, 1378); sec. 401 of the Agricultural Act of 1949, as amended; 63 Stat. 1054, as amended; (7 U.S.C. 1421); Pub. L. 100–387

4. Section 726.51 is amended by revising paragraph (pp)(2) as follows:

§ 726.51 Definitions.

* * * * *

(pp) * * *

(2) *Effective.* The smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds leased to the farm for the previous year. However, with respect to the 1989 crop, if the county committee determines that the farm has produced less than the effective farm marketing quota as a result of a natural disaster condition, the effective undermarketings are the smaller of the:

(i) Actual undermarketings of the 1988 crop minus the number of pounds for which a disaster payment was made on the 1988 crop of tobacco under Part 1477 of this title, or

(ii) Sum of the pounds of quota leased to the farm in 1988 and 125 percent of the 1988 farm marketing quota.

* * * * *

5. Section 726.68 is amended by revising paragraphs (a) and (d)(2); inserting paragraph (d)(3)(iv) previously reserved, and revising paragraphs (d)(4), (e)(4), and (f) to read as follows:

§ 726.68 Transfer of tobacco marketing quotas by lease, by sale, or by the owner.

(a) *General.* Effective with respect to the 1983 crop year and in accordance with the provisions of this section, a burley tobacco marketing quota (including a quota which has been pooled in accordance with the provisions of Part 719 of this chapter) may be transferred between farms within a county by sale or lease, or by the owner to another farm owned or operated by such owner. A sale of quota may be made only when required to prevent forfeiture of the quota in accordance with § 726.69. If the farm is subject to a lien, the consent of a lienholder is not required for either a transfer by sale or a one year transfer by lease or by the owner to be effective. For the 1988 and subsequent crop years, a burley tobacco marketing quota also may be transferred after July 1 by lease to a farm in any county within the same State when the county committee determines that the:

(1) Lessor has planted an acreage of burley tobacco sufficient to produce the effective farm marketing quota under average conditions, and

(2) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of drought, excessive rain, hail, wind, tornado, or other natural disasters as determined by the Deputy Administrator for State and County Operations.

* * * * *

(d) * * *

(2) *Subleasing.* In order to determine whether there is any subleasing of a burley farm marketing quota, the current year is divided into two periods, the period up to and including July 1, and the period after July 1. The county committee shall not approve a transfer during either period if the effect would be both a transfer to and from the farm during the same period: *Provided,* That a transfer may be approved within any crop year if quota is transferred from a farm for one or more years and the farm subsequently is combined with another farm that otherwise is eligible to receive quota by lease or by the owner.

(3) * * *

(iv) *Filed after July 1.* If the transfer agreement is filed after July 1, unless the county committee in the county in which the farm is located for administrative purposes determines that the:

(A) Acreage planted to burley tobacco on the farm was sufficient to produce, under average conditions, an amount of tobacco which, when added to any carryover tobacco from the previous marketing year, would equal the farm's effective farm marketing quota.

(B) Lessor made reasonable and customary efforts to produce the effective farm marketing quota.

(C) Producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(D) Farm's expected production of burley tobacco is less than 80 percent of the farm's effective marketing quota as a result of a flood, hail, wind, tornado, or other natural disaster.

* * * * *

(4) *Receiving farm.* A transfer of quota to a farm by lease or by the owner shall not be approved:

(i) *Limitation.* If the pounds of quota being transferred to the farm by lease or by the owner exceed the smaller of 15,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield: *Provided,* That this provision shall not be applicable to a transfer filed after July 1 of the current crop year in accordance with the natural disaster provisions of this section.

(ii) *Filed after July 1.* If the transfer agreement is filed after July 1:

(A) Unless the producers on the farm qualify for price support in accordance with the provisions of Part 1464 of this title; and

(B) The pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (before the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in the process of being produced) from the farm in the current year.

* * * * *

(e) * * *

(4) *When to file.* Filed on or before July 1 of the current year: *Provided,* That:

(i) *Late filed provision.* An agreement to transfer quota by lease may be considered to have been filed on July 1 of the current year if such transfer agreement is filed not later than the end of the marketing year that begins during the current year and the county committee, with the concurrence of the State committee, determines that on or before July 1 of the current year the lessee and lessor agreed to such lease and transfer of quota and the failure to file such transfer agreement did not result from gross negligence on the part of any party to such lease and transfer.

(ii) *Natural disaster.* A transfer agreement may be filed after July 1 of the current crop year and before February 16 of the following calendar year when the transfer is made in accordance with the natural disaster transfer provisions of this section.

* * * * *

(f) *Period of transfer.* A transfer by lease or by owner may be for a period of one to five years: *Provided,* That an agreement to transfer quota by lease shall be limited to the current crop year if the transfer is filed after July 1 in accordance with the natural disaster provisions of this section.

* * * * *

Signed in Washington, DC on October 25, 1988.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 88-25008 Filed 10-28-88; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 966

Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The final rule regarding Florida tomatoes will authorize expenses and establish an assessment rate under Marketing Order 966 for the 1988–89 fiscal period. Authorization of this budget will allow the Florida Tomato 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: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 966 (7 CFR Part 966), regulating the handling of tomatoes grown in Florida. 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 100 handlers of Florida tomatoes under this marketing order, and approximately 180 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 tomatoes 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 tomatoes. 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 tomatoes. 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 Florida Tomato Committee met on September 8, 1988, and unanimously recommended a 1988–89 budget of $1,537,000. Last season's budget was $763,000. The major expense allocation

is for education and promotion, which at a total of $1,140,500, this item accounts for about 75 percent of the budget. Also, increases are made in production research (up $7,000 to $115,000) and in administrative expenses (up $16,500 to $281,500).

The committee unanimously recommended an assessment rate of $0.025 per 25-pound container, up one cent from last year. When applied to projected shipments of 54.3 million containers, this will generate assessment income of $1,357,500. This amount when added to about $12,500 in other income and $167,000 from the reserve fund will be adequate to cover budgeted expenses. The beginning reserve of $593,000 with above projections, will be reduced to $425,500, well within the marketing order limit of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing 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 39306, October 6, 1988). That document contained a proposal to add § 966.226 to establish expenses and an assessment rate for the Florida Tomato Committee. That rule provided that interested persons could file comments through October 17, 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 966

Marketing agreements and orders, Tomatoes (Florida).

For the reasons set forth in the preamble, 7 CFR Part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 966 continues to read as follows:

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

2. Section 966.226 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 966.226 Expenses and assessment rate.

Expenses of $1,537,000 by the Florida Tomato Committee are authorized and an assessment rate of $0.025 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: October 26, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25135 Filed 10–28–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

Expenses and Assessment Rate for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1988–89 crop year under the marketing agreement and order for California almonds. The almond marketing order requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Almond Board of California (Board) and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. The assessment rate is applied to actual shipments and is expected to produce sufficient income to pay the Board's anticipated expenses during the 1988–89 crop year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1988, through June 30, 1989.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The 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 115 handlers and 7,500 producers under the California almond marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of almond handlers and producers may be classified as small entities.

The almond marketing order requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (USDA) for approval. The members of the Board are handlers and producers of regulated almonds. They

are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of assessable almonds. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board before August 1 of each crop year, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on July 20, 1988, and unanimously recommended 1988–89 marketing order program expenditures of $16,130,309, and an assessment rate of 2.65 cents per pound (kernelweight basis) of almonds.

The 2.65 cent per pound 1988–89 assessment rate compares with a 1987–88 assessment rate of 2.8 cents per pound. While the 2.5 cent per pound creditable rate is the same as the 1987–88 rate, the .15 cent per pound non-creditable portion of the total assessment, which handlers must pay to the Board, is one-half of the .3 cent per pound 1987–88 rate.

Projected expenses of $16,130,309 for 1988–89 compare with 1987–88 budgeted expenses of $15,995,334. Budget categories for 1988–89 are $894,300 for administrative expenses, $257,309 for production research $996,900 for public relations, and $56,800 for the 1989 crop estimate. Comparable actual expenditures for the 1987–88 crop were $676,789, $169,776, $744,428, and $54,100, respectively. The remaining 1988–89 expenses of $13,925,000 is the estimated amount which handlers will spend on their own marketing promotion activities based on a projected 1988–89 marketable California almond production of 557,000,000 kernelweight pounds and assumes that all handlers receive full credit against the 2.5 cent per pound creditable assessment obligation. For the 1987–88 crop year, $14,250,000 was budgeted for handler marketing promotion activities based on a projected marketable production of 570,000,000 kernelweight pounds. An actual figure is not yet available because handlers have until December 31, 1988, to complete marketing promotion activities for which they may receive credit toward their 1987–88 crop year creditable assessment obligations.

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

This action adds a new § 981.337 and is based on Board recommendations and other information. A proposed rule was published in the September 16, 1988, issue of the **Federal Register** (53 FR 36053). Comments on the proposed rule were invited from interested persons until September 26, 1988. Comments were received from Steven W. Easter, Vice President, Member and Government Relations, Blue Diamond Growers (Blue Diamond); Frank S. Swain, Chief Counsel for Advocacy, U.S. Small Business Administration (SBA); and James G. Crecelius, General Manager, Monte Vista Farming Company.

In his comment, Mr. Easter stated that Blue Diamond, representing about 5,100 California almond growers, supports the 1988–89 budget expenditures and assessment rate for almonds.

The SBA, in their comment, disagreed with the USDA's Regulatory Flexibility Act (RFA) certification and questioned the comment period of less than 30 days for the proposed rule. The SBA requested that the USDA perform a regulatory flexibility analysis. Section 605(b) of the RFA provides that agency heads may certify that rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. That section further requires the agency to provide a succinct statement explaining the reasons for such certification. The AMS has considered the economic impact of this rule on small entities. It is the AMS's view that the majority of handlers in the California almond industry may be classified as small businesses. The amount of assessment expenses attributable to such handlers is not significant in comparison to their gross annual receipts and therefore does not constitute a significant economic impact on them. Additionally, the budget and assessment rate was developed by the Board, which is comprised of members nominated by growers and handlers to represent their interests in administering the marketing order. For these and other aforementioned reasons, the administrator of the AMS has certified that this action will not have a significant economic impact on a substantial number of small entities. This certification meets the applicable requirements of the RFA.

The SBA also criticized the ten-day comment period for the proposed rule. Since expenses are incurred on a continuous basis, it was determined that a comment period of less than 30 days was appropriate because the budget and assessment rate approvals needed to be expedited so that the Board would have sufficient funds to pay its expenses. The Board's new fiscal year began July 1, 1988, and the National Agricultural Statistics Service provided necessary information on the almond crop size on July 12, 1988. Thus, the Board was able to unanimously recommend its projected budget expenditures and an assessment rate at its July 20, 1988, public meeting. Since the Board's fiscal year had already begun, a comment period of less than 30 days was deemed appropriate.

In his comment, Mr. Crecelius stated that the proposed advertising assessment is unfair and wasteful of growers' money. The Board, composed of growers and handlers, has recommended the expenditures for advertising activities with a reasonable expectation of improved returns to producers. The Board and the USDA feels that generic advertising, as well as handler brand advertising, and marketing promotion activities benefits all handlers and growers by increasing demand for all almonds. Additionally, handlers may receive credit against their advertising assessments for activities other than brand advertising. Handlers may receive credit for generic advertising and for the following three types of marketing promotion expenditures: (1) The distribution of sample packages of almonds to charitable and educational outlets; (2) the purchase of promotional materials from the Board; and (3) certain costs related to mail order promotions. Alternatively, handlers may receive 150 percent credit against their advertising assessments for direct payments to the Board, for use by the Board to pay its own generic public relations and promotion program. In fact, the Board's 1987–88 generic promotion program was designed to increase the domestic consumption of almonds by developing consumer, food service, and industrial markets. The objective of the consumer program is to build and maintain positive consumer attitudes towards

almonds, encourage present users of almonds to broaden the scope of their usage, and encourage occasional almond users to increase their almond usage. The objective of the food service program is to increase the use of almonds in school lunch menus. The objective of the industrial program is to increase the use of almonds and almond products by industrial manufacturers, increase awareness of the high quality of California almonds, and communicate the product's nutritional advantages.

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

This budget and assessment rate should be expedited because the Board 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 Board at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, a new § 981.337 is added as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

2. Section 981.337 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 981.337 Expenses and assessment rate.

Expenses of $16,130,309 by the Almond Board of California are authorized for the crop year ending June 30, 1989. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.65 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41, but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

Dated: October 26, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–25136 Filed 10–28–88; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 547, 548, 549, 563, 569a, 569b, 569c, 575, 576, and 577

[No. 88–1156]

Receivership Claims Procedures; Review Procedures; Expedited Relief Procedures

Dated: October 24, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is promulgating final rules governing the determination of claims filed against the FSLIC as Receiver for failed savings and loan institutions, and the determination of requests for injunctive or declaratory relief arising from threatened actions by the FSLIC as Receiver. The final rules incorporate, with minor modifications, proposed regulations that were published in the **Federal Register** on June 8, 1988 (Supplemental Notice of Proposed Rulemaking, 53 FR 21474), and supersede Interim Procedures that were published in the **Federal Register** on April 21, 1988 (53 FR 13105).

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Carl J. Gold, Attorney, (202) 377–6265; or Christopher Bellotto, Assistant General Counsel, (202) 377–7401; or Judith L. Friedman, Associate General Counsel, (202) 377–7399; Adjudication Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On June 8, 1988, in a Supplemental Notice of Proposed Rulemaking ("Supplemental Notice," 53 FR 21474), the Board sought comment on proposed regulations regarding adjudicatory proceedings involving FSLIC receiverships.[1] The proposed regulations would constitute three new parts of Title 12 of the Code of Federal Regulations: Part 575, "Procedures for the Administration and Determination of Claims Filed with the FSLIC as Receiver" ("Claims Procedures"); Part 576, "Procedures for the Administration and Determination on Review of Determinations of the FSLIC as Receiver" ("Review Procedures"); and Part 577, "Procedures for the Administration and Determination of Requests for Expedited Relief From Decisions or Threatened Actions of the FSLIC as Receiver" ("Expedited Relief Procedures"). In brief, the scope of each set of Procedures is as follows. The Claims Procedures govern the filing, and determination by the FSLIC as Receiver, of claims for monetary recovery and other forms of relief by creditors and other potential claimants against the receivership of savings institutions for which the Board has appointed the FSLIC as Reciever. The Review Procedures govern the filing, and final determination by the Board, of challenges to determinations by the FSLIC as Receiver pursuant to the Claims Procedures. The Expedited Relief Procedures, which provide a separate avenue of relief from the Claims and Review Procedures, govern the filing and determination, by the Board, of requests for declaratory, injunctive, or other equitable relief by persons faced with a threatened action of the FSLIC as Receiver, for example, a notice of foreclosure, an action for eviction, or repudiation of a contract.

Three comments were received on the proposal; two from individuals and one from a trade association. The commenters questioned the statutory basis, the constitutionality, and the practical efficacy of the requirement that persons filing claims with, or seeking relief from actions by, the FSLIC as Receiver, exhaust their rights through an administrative process before seeking judicial intervention.

The Board stated in the Supplemental Notice:

> the purpose of the proposed regulations is to provide a uniform procedure under which persons seeking relief from actions threatened by the FSLIC as Receiver for a failed institution, or seeking to recover funds or gain other relief from an FSLIC receivership, may exhaust their administrative remedies at the Board. The Board regards such exhaustion as a prerequisite to the availability of judicial review of actions by the FSLIC as Receiver.

53 FR at 21474. By this statement, the Board sought to inform persons unfamiliar with its adjudicatory procedures that it believes claimants and petitioners must exhaust those procedures as a prerequisite to judicial consideration of their claims. The Board continues to hold that view and expects that it will be validated in litigation now pending in the United States Supreme Court. *See Coit Independence Joint Venture v. Federal Savings and Loan Insurance Corporation as Receiver of*

[1] As noted in the Supplemental Notice, this supplemental rulemaking subsumes only a portion of the rulemaking proceeding regarding the conduct of FSLIC receiverships that the Board began in November 1985. *See* 50 FR 48970 (Nov. 27, 1985); 53 FR 25129 (July 5, 1988).

FirstSouth, F.A., cert. granted, 108 S. Ct. 1105 (1988). In view of the pendency of that litigation, in which the issue of exhaustion of administrative remedies will be fully considered and resolved, the issue will not be discussed herein. To the extent that commenters raised issues which would require action by Congress, those comments are also beyond the scope of this proceeding and will not be discussed. One commenter requested that the Board stay promulgation of final rules until *Coit* is decided and/or Congress acts regarding codification of the exhaustion requirement. Such a stay would leave a regulatory vacuum for an indefinite time, to the detriment of Claimants and others requiring Board intervention, as well as to the FSLIC as Receiver. Other commenters raised issues regarding the proper scope and standard of judicial review of Bank Board decisions. Those issues should be resolved in judicial proceedings or through legislation, and will not be considered in this rulemaking proceeding.

Accordingly, the Board will discuss herein only comments relating to specific provisions of the proposed regulations. All commenters proposed specific modifications to the proposed regulations. These commenters recommended that the Board make clear that the FSLIC as Receiver, which all perceive to be an interested party, is not the adjudicator in disputed receivership matters, and stands on an equal footing before the Board with claimants and other third parties. One commenter proposed that the Board employ Administrative Law Judges to conduct oral hearings where issues cannot be resolved on a written record, and that the Administrative Law Judge be empowered to require parties to use alternative dispute resolution procedures, *e.g.*, arbitration or mediation, in appropriate circumstances. All commenters recommended that the Board utilize, at least in some circumstances, oral hearing procedures, affording the parties the opportunity of cross-examination and discovery, including the use of subpoenas. Two commenters protested that the Claims Procedures enable the Receiver to delay the resolution of claims, and recommend that the Board adopt fixed time limits for the various steps in the claims determination process, or for the Receiver's determination in general.

Upon review of the comments and consideration of the Board's experience since publication of the Supplemental Notice, the Board has determined not to make major modifications to the proposed regulations. As noted in the Supplemental Notice (53 FR at 21474), the proposed regulations were based upon Interim Procedures published in the **Federal Register** on April 21, 1988 (53 FR 13105). Those Interim Procedures were, in turn, the product of repeated refinement of procedures the Board has employed in hundreds of adjudicatory proceedings since early 1986. As intended, numerous claimants and others are utilizing the procedures, and have exercised their rights to obtain judicial review of Board determinations.[2] The Board believes that the proposed regulations are consistent with the purposes enunciated in the Supplemental Notice, and should be adopted with only minor, technical modifications.

In regard to the comments concerning specific features of the Board's proposed adjudicatory procedures, the Board has already addressed the concern that the FSLIC as Receiver should not be the adjudicator of claims and other requests for relief. The FSLIC as Receiver has no decisional function in regard to Requests for Expedited Relief, and, while it can allow or disallow claims, under the final regulations and disallowance of a claim is not an adjudication, but merely a determination that the Receiver believes it is in the best interest of the estate to contest the claim. *See* § 576.3(e) (Board may make its own findings of fact and conclusions of law based upon the Administrative Record compiled in the review of the Receiver's Determination). To date, the Board has not found use of Administrative Law Judges or discovery or subpoena power to be necessary. Moreover, legislation would likely be required for the Board to employ Administrative Law Judges and to give the Board an effective subpoena mechanism and it would be impracticable to delay adopting final regulations pending such Congressional action. One commenter recommended that the Board utilize alternative dispute resolution procedures. The Board is willing to utilize such procedures on a case-by-case basis within the existing adjudicatory process if the parties to an adjudication demonstrate that such procedures would serve the public interest. A specific rule on this subject is, therefore, unnecessary. Finally, the Board finds some merit to the suggestions that strict time limits be imposed upon the Receiver's processing of claims. However, none of the parties proposed specific time limits or attempted to supply data that would enable the Board to establish such limits. The Board will, through its developing experience in the adjudicative process and through the collection of data relating to the determination of claims, continue to investigate the need for, and proper scope of, time limits for the Receiver's determination of claims.

[2] *See McIlwain v. FSLIC*, No. A-88-CA-597 (W.D. Tex., Aug. 2, 1988); *Musacchio v. FSLIC*, C 88-2227 (N.D. Cal., June 8, 1988); *Gold Hawk Joint Venture, et al. v. FSLIC*, No. 4-88-346-E (N.D. Cal., July 5, 1988); *Black v. FHLBB*, No. H-87-3298 (S.D. Tex., Oct. 8, 1987); *Gray Falls Shopping Center, Ltd., et al. v. FSLIC*, No. H-86-3877 (S.D. Tex., Aug. 6, 1987); (consolidated judicial review of Board decisions that denied five Requests for Expedited Relief).

Summary of Technical Modifications to Proposed Regulations

Upon further review of its experience in processing claims pursuant to the Interim Procedures, the Board is adopting the rules as proposed, with the following technical modifications.

Proposed § 575.1(a) is modified to clarify that the Claims Procedures, which govern actions of Special Representatives and managing officers of receiverships, also apply to their agents and employees.

Proposed § 575.2(a) is modified to conform to the scope of § 569c.11(a)(2).

Proposed § 575.2(c)(2) is modified to describe accurately the functions currently performed by agents of Special Representatives.

Proposed § 575.2(h)(1)(v) is modified to conform to the dollar amount established by § 569c.11(a)(4), below which a claim need not be filed for certain services.

Proposed § 575.2(z) is modified to accurately reflect the authority by which a Special Representative may be appointed.

Proposed § 575.5 is incorporated in § 575.3, and modified to reflect actual receivership publication practices.

A new § 575.5 is added, encompassing a portion of proposed § 575.3.

Proposed § 575.12(c) is modified to clarify that "Special Representative" in § 575.13 also includes a designee of the Special Representative.

Proposed § 575.13(f) is modified to conform to general disclosure practices regarding settlement negotiations.

Proposed § 575.13(g) is modified to make mailing procedures internally consistent.

Proposed § 575.13(m) is deleted as superfluous. All subsequent subsections are renumbered to reflect this deletion.

Proposed § 575.13(q) is modified to clarify that the Receiver is to provide Claimants with the Board's Review Procedures in case of a total or partial disallowance.

Proposed § 575.13(s) is deleted as unnecessary; the function contemplated for the record of claim is already

performed by the Notice of Allowance (or Disallowance).

Proposed § 575.17(b)(2) is modified to eliminate redundancies in relation to § 575.17(b)(1).

Section 575.14 reflects changed nomenclature to avoid confusion with Requests for Expedited Relief.

Final Regulatory Flexibility Analysis

No comments were filed addressing the Initial Regulatory Flexibility Analysis contained in the Supplemental Notice. Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **"SUPPLEMENTARY INFORMATION"** regarding this final rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **"SUPPLEMENTARY INFORMATION"**.

3. *Significant alternatives minimizing small-entity impact and agency response.* The proposed rules would apply to all claimants, petitioners and receiverships, regardless of size. Every effort has been made in formulating the rule to minimize financial and other burdens on individuals and small businesses participating in the Board's adjudicatory process.

4. *Overlapping or conflicting federal rules.* None known.

List of Subjects in 12 CFR Parts 575, 576, 577

Savings and loan associations.

Accordingly, the Board hereby amends Chapter V, Subchapter D of Title 12, Code of Federal Regulations, as set forth below.

1. The Interim Procedures affecting Parts 547, 548, 549, 563, 569a, 569b, and 569c published in the **Federal Register** of April 21, 1988 (53 FR 13105) are hereby removed.

2. Part 575 is added to read as follows:

PART 575—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF CLAIMS FILED WITH THE FSLIC AS RECEIVER

Sec.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 575.1 Purpose.

(a) The purpose of these procedures is to provide for uniform administration and determination of claims filed with the FSLIC as Receiver under appointment by the Federal Home Loan Bank Board ("Board" or "Bank Board"]. These procedures are to be followed by Special Representatives and managing officers of the receiverships and their agents and employees to assure compliance with the Federal Regulations governing the processing and determination of claims, and to insure uniformity of notices to claimants, documentation of claims, determination of the merits of claims by allowance or disallowance in whole or in part, payment of claims, and the review process. Full compliance with and exhaustion of these procedures is a prerequisite to review by the Federal Home Loan Bank Board. Judicial review of the disallowance in whole or in part of a claim against the assets of the FSLIC as Receiver is available only after exhaustion of these procedures and review and final agency action by the Board. These procedures are also applicable where, pursuant to statutory and regulatory authority, the Federal Deposit Insurance Corporation is the Receiver for a Federal savings bank.

(b) The Board, in its regulations, and its Office of General Counsel, have made it clear that the FSLIC as Receiver of an institution the accounts of which are insured by the FSLIC, recognizes the validity of certain secured obligations of insured institutions entered into pursuant to legal authority, and the right of secured creditor in certain circumstances to cause the liquidation of collateral.

(c) The General Counsels of the Board have rendered several opinions concerning the status of collateralized obligations of a savings and loan association for which the Board has appointed the FSLIC as Receiver, beginning in 1983; and the Board has issued resolutions concerning the subject. These procedures are not inconsistent with such opinion issued by General Counsels of the Board or the Board's resolutions; and these procedures should not be taken to mean or imply that compliance with the procedures is a condition precedent to liquitation of collateral in the circumstances in which the General Counsel's opinions have indicated that a court would permit the liquidation of collateral or the Board has indicated by resolution or order that liquidation of collateral would be permitted.

(d) The Board, in adopting these procedures, is not directing the FSLIC as Receiver to require such secured creditors to observe all such noticed procedures as a precondition of exercising valid liquidation rights pursuant to valid security contracts entered into by an insured institution as authorized under its governing law prior to the appointment of the Receiver. Nor is the Board directing the FSLIC as Receiver to subject such holders of participating interests that are not creditors of the insured institution in receivership generally to such procedures. In the event, however, that a Receiver disputes a creditor's claim to a security interest in an asset in which the institution has an interest or a participant's characterization of its status, the Receiver may require such creditor or other entity to establish its claimed status prusuant to these procedures; and the Receiver in such cases may take such action as it deems necessary to protect its interest in any asset.

§ 575.2 Definitions.

For the purposes of these procedures, the procedures for Requests for Review pursuant to Part 576 of this chapter, and the procedures for Requests for Expedited Relief pursuant to Part 577 of this chapter, the following definitions shall apply:

(a)(1) "Administrative expenses of the association" means expenses incurred within thirty (30) days prior to the Receiver's taking possession of the association, and are limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers,

examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expensed reimbursement policy, that, in the opinion of the Receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association;

(2) "Administrative expenses of the Receiver" means the costs, expenses, and debts of the Receiver;

(b) "Affected Person" means a person, corporation, partnershnip or other legal entity that owns or has an interest in real or personal property, or is otherwise obligated on a debt secured by real or personal property, against which the Receiver has expressd an intent to take action that may affect, impair, diminish, or terminate such interest. By way of example only, if the Receiver posts for foreclosure pursuant to a deed of trust, the legal owner or owners of the real estate encumbered with the lien sought to be foreclosed on would be an "Affected Person."

(c) "Agent of the Special Representative" means a person designated by the Special Representative, the Bank Board, or the FSLIC to perform certain functions for the receivership, which may include but are not limited to maintaining a tracking system of claims filed with the Receiver and reviewing Proofs of Claim submitted to the Receiver.

(d) "Applicant" means any person or entity that asserted a claim against the Association or the Receiver and seeks review by the Bank Board.

(e) "Association" means savings and loan association or savings bank for which the Board has appointed the FSLIC or the FDIC as Receiver.

(f) "Board" or "Bank Board" means the Federal Home Loan Bank Board, as defined in 12 CFR 500.10 or its authorized agent.

(g) "Certificate of Mailing" means a written statement certifying that the referenced document has been placed in the United States mail, first class, postage prepaid, on the date specified.

(h) "Claim" means an assertion of a right to payment or other relief against an association or the Receiver; it does not include a demand for deposit insurance to the extent such insurance is payable or paid by FSLIC, acting in its corporate capacity, or a Request for Expedited Relief which is filed with the Board. All claims shall be submitted in writing in a Proof of Claim.

(1) "Claim" includes but is not limited to:

(i) Demand for recoupment, set-off, security, priority, or preference;

(ii) Request to foreclose or to oppose foreclosure by the Receiver on security property or assets of the association;

(iii) Demand for interest, penalties, fees or the recognition or nonrecognition of liens securing equitable subordinated claims;

(iv) Administration expenses of the association (a proof of claim need not be filed for services that were actually rendered, within 30 days prior to the Receiver's taking possession, by accountants, attorneys, appraisers, examiners, or management companies). Such services will be considered for priority payment by the Receiver as explained in Subpart D of this part, if in the opinion of the Receiver such services are of benefit to the receivership;

(v) Demand by employees of the association for wages and salaries, including vacation, severance, sick leave pay, and contributions to employee benefits plan; (a proof of claim need not be filed for wages, salaries, and benefits earned within 30 days prior to the appointment of the Receiver that do not exceed $3,000, or as otherwise set by the Board, which wages, salaries, and benefits will be considered for priority payment by the Receiver as explained in Subpart D of this part).

(2) "Reconcilable claim(s)" means a claim that may be allowed in whole based upon the Receiver's review of the books and records of the association or the Receiver without additional fact finding or additional consideration of related legal issues.

(3) "Claim(s) retained for further review" means claims that are not Reconcilable Claims.

(i) "Claimant" means any person or entity asserting a claim against the association or the Receiver.

(1) A Claimant may include, but is not limited to:

(i) Holder(s) of claim(s) that appear on the face of the books or records of the association, or are otherwise known to the Receiver, on the date of appointment of the Receiver;

(ii) Holder(s) of claim(s) that appear on the face of the books or records of the association or the Receiver, or are otherwise known to the Receiver after the date of the appointment of the Receiver;

(iii) Holder(s) of claim(s) that arise from acts or omissions of the Receiver;

(iv) Holder(s) of a participation interest in a loan originated by the association or in which the association is participating, if the Receiver disputes the participant's characterization of its status;

(v) Borrower(s);

(vi) Guarantor(s);

(vii) Unsecured creditor(s), or secured creditor(s);

(viii) Holder(s) of mechanic's, materialmen's, or other lien(s) or person(s) or entities that seek to obtain a mechanic's, materialmen's, or other lien against assets of the association or assets in which the Receiver has or seeks to assert an interest; or

(ix) Any person(s) or entities seeking to recover civil money damages or equitable relief against the association or the Receiver.

(2) Claimants, at their election, may be represented by an agent, who shall be designated and identified to the receiver in writing by name and address. Upon such designation, all correspondence and communication shall be between the Special Representative and the agent for the Claimant. For purposes of these procedures the term Claimant shall be deemed to include any properly designated agent(s) of the Claimant.

(j) "Claims Counsel" means legal counsel retained to represent the Receiver, as designated by the Special Representative with the consent of the General Counsel, to perform specific tasks, hereinafter described.

(k) "Claims Procedures" means the Procedures for the Administration and Determination of Claims Filed with FSLIC as Receiver.

(l) "Current bills" means those administrative expenses of the Receiver incurred on or after the date of the appointment of the Receiver, and includes costs, expenses, and debts of the Receiver.

(m) "Depositor" or "Accountholder" means the holder of a withdrawable account or accounts in an association.

(n) "Director, OFSLIC" means the Director of the Office of the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.20.

(o) "Filed with" or "served upon" means actually received.

(p) "FSLIC" means the Federal Savings and Loan Insurance Corporation, as defined in 12 CFR 500.4.

(q) "General Counsel" means the General Counsel to the Board, as defined in 12 CFR 500.17, or an attorney(s) in the Office of General Counsel ("OGC") designated by the General Counsel.

(r) "Insurance Division, OFSLIC" means the Insurance Division of the Office of Federal Savings and Loan Insurance Corporation.

(s) "Federal holiday" means a day designated as a legal holiday by the

President or the Congress of the United States of America.

(t) "Petitioner" means an Affected Person filing a Request for Expedited Relief.

(u) "Proof of Claim" means the form specified by the Director, OFSLIC, with the concurrence of the General Counsel, upon which a claim shall be submitted in writing. The Claimant shall have a continuing duty to supplement and update information contained therein, including but not limited to advising the Receiver in writing of the Claimant's current address.

(v) "Publish" is defined at 12 CFR 549.1(a).

(w) "Receiver" means the FSLIC or the Federal Deposit Insurance Corporation as Receiver as appointed by the Bank Board pursuant to applicable federal law.

(x) "Receiver's record" means all notices to claimants, Proof(s) of Claim, anything required by the procedures, and any documentation and other writing compiled by the Special Representative that form the basis for the Receiver's determination to allow or disallow a claim in whole or in part.

(y) "Request for Expedited Relief" means a written request submitted by an Affected Person to the Bank Board in accordance with applicable procedures. A Request for Expedited Relief is not a "claim" as defined herein.

(z) "Special Representative" means individual(s) designated as Special Representative(s) for the FSLIC as Receiver for an association as stated in the Board Resolution appointing the FSLIC as Receiver, in another Board Resolution, or as designated pursuant to any Board Resolution. The Director, OFSLIC, or designee, with the concurrence of the General Counsel, shall designate the Special Representative(s) for each receivership who will have primary responsibility for the administration of the claims procedure. The Special Representative(s) shall conduct the claims procedure, including the determination of the merits of claims.

(aa) "Disallowed claim" means a claim or part of a claim which, pursuant to the Receiver's Determination, has not been allowed.

Subpart A—Notice to Potential Claimants

§ 575.3 Publication of notice.

In accordance with the existing regulations and orders of the Board, the Receiver shall, promptly after the date of appointment, publish notice to all potential claimants of the association as shown on the books and records of the association, or as otherwise may be known to the Receiver, of their right to present claims to the Receiver and simultaneously shall mail to such claimants at their last known address: (a) A notice of their right to present claims to the Receiver, (b) a Proof of Claim form, and (c) a copy of the "Instructions for Filing Claims with the FSLIC as Receiver."

Such notice shall be published 30 days and again 60 days after the date of the first publication. The Special Representative shall retain copies of the published notices in the files of the Receiver.

§ 575.4 Proof of Claim.

The notice shall provide that a Proof of Claim shall be filed with the Receiver on or before a specified date not less than 90 days from the date of the first publication of such notice.

§ 575.5 Insured deposits.

Demands by accountholders for deposit insurance will be determined by the Insurance Division, OFSLIC, in separate proceedings, and not pursuant to this Claims Procedure.

§ 575.6 Uninsured deposits.

(a) When a depositor receives a determination from the Insurance Division, OFSLIC, that some of the amount deposited is uninsured, the depositor will receive a Certificate of Claim in Liquidation for any uninsured amount on deposit. A copy of that Certificate will be provided to the Receiver by the Insurance Division.

(b) The Receiver will retain the Certificate for the period of the receivership. When there is a distribution to general creditors, such claims will be paid pro rata with others of the same priority out of the assets of the receivership.

(c) A depositor also may be a claimant under this Claims Procedures for claims not based upon insurance of accounts. The FSLIC need not file a claim for amounts of deposits on which it pays insurance or otherwise satisfies its insurance obligation.

Subpart B—Procedure for Initial Review of Claims

§ 575.7 Agents of the Special Representative.

The Special Representative shall designate as many agents, as, in the opinion of the Special Representative, are necessary and appropriate to review and process claims filed with the Receiver and to perform functions as assigned by the Special Representative ("agent of the Special Representative"). The Special Representative, in consultation with the General Counsel, shall designate from the law firm(s) retained to advise the Receiver as many Claims Counsel as are necessary to assist in the claims process. Such law firm(s) shall act under the supervision of and be advised by the General Counsel.

§ 575.8 Control log for Proofs of Claims.

All Proofs of Claim filed with the Receiver shall be recorded by entry into a control log in chronological order of receipt. The control log shall include the name of each claimant and an assigned serial number.

§ 575.9 Review of Proof of Claim.

After each Proof of Claim is entered into the control log, an agent of the Special Representative shall review it to determine whether it has been properly filed in accordance with the directions contained in the Notice to Claimants and the Proof of Claim form ("properly filed").

(a) If a Proof of Claim is found not to be properly filed, a copy of it shall be returned to the claimant promptly with a written explanation of the deficiencies in it ("deficiency notice"). The deficiency notice shall advise the claimant that a corrected Proof of Claim must be filed with the Receiver within the later of 30 days from the date of the mailing of the deficiency notice or the filing date published under § 575.4 of this part, and that failure to correct the deficiencies before the expiration of the applicable time period may result in disallowance of the claim.

(b) In the discretion of the Special Representative, if material deficiencies in the Proof of Claim are not timely corrected, the claim may be disallowed in whole or in part. The determination of disallowance for failure to correct deficiencies in the Proof of Claim shall be in writing and explain the deficiencies that remain and shall be mailed promptly to the Claimant by certified mail, return receipt requested, and regular mail with a certificate of mailing. A copy of the determination, the certificate of mailing, and the receipt card, if any shall be maintained in the files of the Receiver for the duration of the receivership, and shall become part of the administrative record.

(c) The originals of a Proof of Claim, deficiency notice, and any corrected Proof of Claim shall be retained in the files of the Receiver and shall become part of the record with respect to such claim.

(d) When a Proof of Claim or any corrected Proof of Claim is determined to be properly filed, the claim shall be promptly assigned to an agent of the

Special Representative for initial review on the merits. A properly filed corrected Proof of Claim shall supersede a previously filed deficient Proof of Claim for purposes of reveiw on the merits.

§ 575.10 Review on the merits of a claim.

The review on the merits shall determine whether each claim:

(a) Is a Reconcilable Claim that the Special Representative may allow in whole based upon the books and records of the association or the Receiver, which books and records appear to be reliable and to provide no basis for disallowance; or

(b) Is a claim that should be retained for further review, which claim the Special Representative cannot allow in whole or disallow in whole or in part without further review or investigation.

§ 575.11 Allowance, disallowance, or retention for further review of claim.

The Special Representative shall notify each Claimant within 180 days after the end of the 90 day notice period, as set forth in the regulations, or after receipt of the properly filed Proof of claim, whichever is later, whether the claim is allowed in whole or in part, disallowed, or retained for further review. The notice shall be in writing and shall be mailed to the Claimant by certified mail, return receipt requested, and by regular mail with a certificate of mailing.

Subpart C—Procedure for Review of Claims Retained for Further Review

§ 575.12 Special Representative and Claims Counsel.

The Role of the Special Representative and Claims Counsel:

(a) The Special Representative shall be the decisionmaker, and the Claims Counsel shall provide legal advice to the Special Representative. The Special Representative, in his discretion, may assign the tasks of review of claims to Claims Counsel or to other agents of the Special Representative, subject to the oversight and direction of the Director, Operations and Liquidation Division, OFSLIC, with the advice and consent of the General Counsel.

(b) In exercising this discretion, the Special Representative shall consider:

(1) The nature of the task;

(2) The issues involved in the claim; and

(3) Where no significant legal issue is presented, the cost savings involved in assigning to a non-attorney agent of the Special Representative those tasks, such as preparing and forwarding notices to the Claimant, that do not require an attorney or that can be performed by a non-attorney at the direction and under the supervision of Claims Counsel.

(c) References to the Special Representative in the provisions of § 575.13 of this part, therefore, include agents or other designees of the Special Representative.

§ 575.13 Elements of review.

(a) Upon assignment, an agent of the Special Representative shall review promptly the Proof of Claim and documentation submitted by the Claimant in support of the claim and determine whether additonal documentation or other writings or materials are necessary to reach a determination with respect to the claim.

(b) In connection with the compiling of such documentation, the Special Representative may require the Claimant to provide additional information or documentation in support of the claim. Specifically, the Special Representative may:

(1) Notify the Claimant in writing to file with the Receiver, within 30 days, additional documentation or written information if, in the opinion of the Special Representative, it appears that such additional documentation or others written information would assist in the determination of the claim;

(2) Notify the Claimant to make available for inspection and copying any relevant, non-privileged documents or written information in the custody of or subject to the control of the claimant or his agent at a reasonable time, upon reasonable notice, and at the Receiver's expense;

(3) Notify the Claimant to file with the Receiver within 30 days a sworn written response to written questions posed on behalf of the Receiver ("response to written questions").

(c) The Special Representative may, at a reasonable time after reasonable notice, review documents or other written information relevant to the claim in the custody of or subject to the control of any person or entity, including the Claimant or his employees, and may obtain sworn statements in which statement, documents or other writings shall be made a part of the Receiver's record. In connection with the gathering of this documentation or information, the Special Representative may require the Claimant to make such documentation or information available to the Special Representative or to assist or cooperate with the Special Representative in obtaining it.

(d) The Special Representative shall, upon the request of a Claimant, provide an opportunity, at a reasonable time after reasonable notice to the Special Representative, to inspect and copy at the Claimant's expense any non-privileged documents or other written information relevant to the claim that are in the custody of or subject to the control of the Receiver.

(1) All requests to inspect or copy such documents shall be in writing, shall be specific, shall not request materials already in the possession of or otherwise reasonably available to the Claimant, and shall be framed so as to avoid undue burden or expense to the Receiver.

(2) A written request that fails to comply with such requirements shall be subject to denial by the Special Representative.

(3) The Special Representative may defer response to document requests until he has decided whether to retain the claim for further review. The Special Representative may decide to deny a document request from a Claimant if he determines to allow the claim in whole.

(e) The Special Representative may grant requests by a Claimant to appear before an agent of the Special Representative, or may require Claimants to appear before an agent of the Special Representative, to give statements or discuss the claim or documentation.

(f) The Special Representative or his agent, subject to the approval of the Special Representative, may negotiate compromises or settlements of claims. Settlement agreements shall be reduced to writing and made a part of the Receiver's record. Statements by Claimants and Receivers' Representatives and their agents made during settlement discussions and in written communications for purposes of settlement shall not be part of the Receiver's record and shall be treated in accordance with Federal Rule of Evidence 408.

(g) The Special Representative may require the Claimant in writing to submit a memorandum addressing legal issues the resolution of which would assist in the determination of the claim ("request for memorandum"). The request for memorandum shall be mailed to the Claimant with a certificate of mailing, and shall advise the Claimant that the memorandum shall be filed with the Receiver no later than 30 days after the date of mailing of the request for memorandum. The request for memorandum, certificate of mailing, and any memorandum filed by the Claimant shall be made a part of the Receiver's record.

(h) The Special Representative shall inform the Claimant in writing that the Special Representative, in his sole discretion, may disallow in whole or in

part any claim in the event the Claimant fails:

(1) To provide to the Special Representative, as requested and within the time period specified, additional documentation or written information, responses to written questions, or memorandum;

(2) To make available for inspection and copying any non-privileged documents in the Claimant's custody or subject to the Claimant's control; or

(3) To appear and give a sworn statement upon notice by the Special Representative.

(i) The Special Representative shall compile a Receiver's record consisting of: The Proof(s) of Claim, all documents or other writings and sworn statements submitted by or obtained from the Claimant or his agent; all sworn statements and documents or other writings obtained from persons or entities other than the Claimant, and all documents or other writings in the custody or subject to the control of the Special Representative which, in the opinion of the Special Representative, are relevant to the claim; and all notices from the Special Representative to the Claimant.

(j) After compiling the Receiver's record, the Special Representative shall notify the Claimant in writing of the compilation of the record ("notice of record"). The notice of record shall itemize, in the form of an index, those documents, statements, and other writings that are to be made a part of the record and advise the Claimant to provide the Receiver within 30 days of the date of the mailing of the notice of record with any additional documents, statements, written information, or other writings for inclusion in the record. The Special Representative shall mail the notice of record by certified mail, return receipt requested, and by regular first class mail and execute a certificate of mailing. Thereafter, the Receiver's record shall include the documents as described in the index, the notice of record, and any additional documents provided by the Claimant in response to the notice of record. The Receiver's record will be made available to the Claimant, at any reasonable time and upon reasonable notice, for inspection and copying at the Claimant's expense.

(k) Claims Counsel shall consult with the Special Representative and provide such confidential, privileged legal advice as may be necessary to assist the Special Representative to reach a proposed determination with respect to the claim.

(l) After evaluating the information contained in the Receiver's record, the Special Representative shall prepare a proposed determination of claim in the form of proposed findings of fact and conclusions of law ("proposed determination").

(m) The Special Representative shall promptly mail the proposed determination to the Claimant by certified mail, return receipt requested, and regular first class mail, and execute a certificate of mailing.

(n) If the Claimant does not file a request for reconsideration as specified in paragraph (o) of this section, the proposed determination shall constitute the Receiver's Determination, and the Special Representative shall notify the Claimant in writing of his right to obtain review of the Receiver's Determination by the Bank Board, in accordance with applicable regulations and procedures. The notice shall state that such review by the Bank Board is a prerequisite to obtaining judicial review.

(o) The proposed determination shall advise the Claimant of his right to file with the Receiver, within 30 days from the date of mailing of the notice, a written request for reconsideration ("request for reconsideration").

(1) The request for reconsideration shall state the specific grounds for any objection to proposed findings of fact or conclusions of law and may present proposed alternative findings of fact and conclusions of law. The request for reconsideration should present more than mere conclusory objections to proposed findings of fact or conclusions of law.

(2) If the Claimant does not object to a proposed finding of fact or conclusion of law in the request for reconsideration, such fact or conclusion shall be conclusively established against the Claimant.

(3) If the request for reconsideration is not timely filed with the Receiver, any objections to the proposed findings of fact and conclusions of law, in the absence of an extension of time by the Special Representative or a showing of good cause, may be deemed to be waived by the Claimant.

(4) The Special Representative shall promptly reply in writing to the request for reconsideration (Special Representative's reply"). The Special Representative's reply will state whether the Special Representative agrees or disagrees with the contentions contained in the request for reconsideration and explain modifications, if any, made by the Special Representative to the proposed determination. The Special Representative's reply will be mailed to the Claimant by the Special Representative by certified mail, return receipt requested, and regular mail with a certificate of mailing.

(5) The request for reconsideration and the Special Representative's reply shall become part of the Receiver's record.

(6) After considering the Receiver's record, the Receiver will issue a determination on the claim ("Receiver's Determination"), signed on behalf of the Receiver by the Special Representative, in the form of findings of fact and conclusions of law.

(p) The Special Representative shall promptly mail to the Claimant by certified mail, return receipt requested, and by regular mail, the Receiver's Determination and a statement of the Claimant's right to obtain review of the Receiver's Determination by the Bank Board. The statement shall inform the Claimant that requesting such review by the Bank Board is a prerequisite to obtaining judicial review, and shall enclose a copy of the procedures for obtaining review. The Receiver's Determination and the executed return receipt, if any, shall be made a part of the Receiver's record, whereupon the Receivers record, which is the basis for any Request for Review to the Bank Board, shall be deemed closed.

(q) The Special Representative shall maintain the Receiver's record in the office of the Receiver for the duration of the receivership and for a period of six (6) months following termination of the receivership by the Bank Board upon conclusion of the final audit.

§ 575.14 Request for immediate determination.

A Claimant may make a written request to the Receiver that a claim be processed immediately. The burden shall rest upon the Claimant to establish good cause for immediate processing of a claim. The standard for good cause shown shall be substantial harm to the Claimant in the absence of immediate processing. It shall be in the sole discretion of the Receiver whether to direct that a claim be accorded immediate processing. The Receiver shall notify the Claimant in writing, by certified mail, return receipt requested, and regular mail, of his decision on the request, and in the event the request is granted, the schedule for such immediate processing.

Subpart D—Standards for Determination of Claims

§ 575.15 Burden of proof

The burden of proof shall rest upon the Claimant to establish the claim by a preponderance of the evidence.

Preponderance of the evidence means evidence that when fairly considered produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto.

§ 575.16 Exclusion from claims procedure.

(a) A proof of claim need not be filed for certain administrative expenses of the association enumerated below, and for employee age claims of $3,000.00 or less.

(b) Claims regarding current bills of the Receiver are not subject to the bar date for the receivership.

§ 575.17 Application of claims procedure.

(a) Administrative expenses of the association and employee wage/benefit claims are claims and thus are subject to the requirements of the claims procedure except as provided in § 575.2(h)(1)(iv) and (v) of this part.

(b) Service or materials providers and association employees shall be provided with Proof of Claim forms to submit to the Receiver to obtain payment of administrative expenses of the association and appropriate employee wage/benefit claims.

(c) Federal law preempts any state law that directs prompt payment of employee wages/benefits upon employment termination. The Special Representatives are urged to assure affected employees that their claims for wages/benefits will receive expeditious consideration.

§ 575.18 Criteria for the determination of claims for provision of services, supplies, and materials.

No claim for provision of services, supplies, or materials shall be allowed in full in the absence of:

(a) Evidence that the services, supplies, or materials were provided in good condition or at an acceptable market or professional level.

(b) Evidence that the services, supplies, or materials were provided on the dates and in the quantities as claimed.

(c) Evidence that the charges or fees are based upon actual services rendered or materials provided and are commensurate with the appropriate geographical market, professional, or trade standards for the services or materials provided on the applicable dates.

(d) Evidence that any payments already made on a claim by the Association or the Receiver have been deducted from the claim.

(e) A determination by the Special Representative that there is not pending judicial or other proceedings involving the claim and that there exists no judgment or other final determination in a proceeding on the claim.

(f) A determination by the Special Representative that the Receiver does not have any set-off rights or counter-claims against the Claimant.

(g) A determination by the Special Representative that the claim does not appear to be fraudulent or otherwise reasonably suspect.

§ 575.19 Claims to security, priority, or preference.

With the exception of certain payments established and set out in the implementing Board Resolution or other orders or resolutions of the Board, which payments are to be made promptly and are excluded from requirements of the claims procedure, all claims to security, priority, or preference shall be claims retained for further review within the claims procedure. This will afford the Special Representative the opportunity, in consultation with Claims Counsel, to determine whether the Receiver has a basis or grounds upon which to challenge the granting of a security interest in receivership assets. If no basis is found to challenge the grant of a security interest in a receivership asset, the Receiver shall immediately allow the claim. Secured Claimants who require a decision upon their claims more rapidly than the 180 days provided for initial review should file a request as specified in Subpart C, § 575.14 of this part, explaining how a delay in decision could cause them harm.

3. Part 576 is added to read as follows:

PART 576—PROCEDURES FOR THE PROCESSING AND DETERMINATION ON REVIEW OF DETERMINATIONS OF THE FSLIC AS RECEIVER

Sec.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 576.1 Purpose.

The following procedures will be used for the processing and determination on review of determinations of the Federal Savings and Loan Insurance Corporation [FSLIC] as Receiver.

§ 576.2 Notice of right to file a Request for Review.

Claims denied in whole or in part by the FSLIC as Receiver are subject to review by the Federal Home Loan Bank Board [Bank Board] upon timely filing of a Request for Review. Should the FSLIC as Receiver deny the claim in whole or in part, the parties will be so notified in writing and this notice will explain the right to review before the Bank Board and include a copy of the review procedures. All Requests for Review must comply strictly with the following procedures. Failure to comply with these procedures may result in dismissal of the Request for Review.

§ 576.3 Filing of a Request for Review.

(a) A Request for Review of a Receiver's Determination ("Request" or "Request for Review") must be filed within 60 calendar days from the date the Determination is issued.

(b) All Requests for Review are deemed to be filed when received and date/time stamped by the Bank Board.

(c) A Request for Review (original and 1 copy) must be filed with the Bank Board at the following address:

Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, 1700 G Street, NW., Washington, DC. 20552, Attention: Lead Paralegal.

The Request must include a signed statement certifying that a copy has been mailed or hand delivered to the Receiver.

(d) All submissions (*i.e.*, the Request, Response, and all other related filings) must inlcude an original and one (1) copy as well as a signed statement certifying that a copy has been sent to the opposing party(ies) and any other interested party. Failure to comply with this requirement may result in the return of the filing as incomplete and could adversely affect the party's rights to proceed.

(e) The Receiver shall provide the Bank Board, within 10 work days of the Bank Board's receipt of the Request, with a copy of the Receiver's record of the proceeding. The Receiver shall certify that the copy of the record provided to the Bank Board is complete, true, and correct. The Receiver may, within the same time period, file a Response to the Request for Review, which shall be served upon the person requesting review ("Requestor").

(f) The Receiver shall make available to the Requestor, or any interested

party, during normal business hours, at the offices of the Receiver's representative, the opportunity to review the Receiver's record of the proceeding. At the request of any Requestor or interested party, the Receiver shall provide copies of the Receiver's record. The costs of duplication shall be borne by the party requesting the copies.

(g) A Request for Review must be filed within the time provided under this paragraph (a) of this section. Failure to file a Request for Review within this time period constitutes waiver of any objection to the Receiver's Determination. A timely Request filed with the Bank Board in accordance with these procedures is mandatory to obtain judicial review of the Receiver's Determination. Any part of the Receiver's Determination that the Request for Review does not contest shall not later be the subject of judicial review.

§ 576.4 Content of Request for Review.

(a) To be deemed complete a Request for Review must include:

(1) A clear and concise statement of the facts and arguments on which the Request is based;

(2) A clear and concise statement of the alleged factual and legal errors in the Receiver's Determination, including citation to applicable statutes, regulations, and legal authority, and to the Receiver's record; and

(3) If the Request is based on facts not available to the Receiver at the time of issuance of the Receiver's Determination, a separate identification and statement of all such fact upon which the Request is based.

(b) The Bank Board anticipates that in most cases a preliminary review of the Request and the Receiver's record will be made within 60 days of the date that the Receiver's record was received. At that time, the parties will be notified in writing that:

(1) The Administrative Record (defined in § 576.5(a) of this part) is complete and is closed; or

(2) More information is needed (in which case further instructions will be included); or

(3) The Bank Board anticipates that an additional 30, 60 or 90 days may be necessary before preliminary review can be completed.

§ 576.5 Basis for Board Decision.

(a) The Administrative Record that forms the basis of the Bank Board's Decision generally consists of the Request for Review, the Receiver's record, and any response to the Request for Review ("Response") submitted by the Receiver or other interested party(ies).

(b) Any materials in addition to those in paragraph (a) of this section may be admitted to the Administrative Record only upon an Order of the Bank Board to allow supplementation of the Administrative Record. Any party may, by motion, request leave to supplement the record; however, such motions will be granted only upon a showing of good cause. A finding of good cause by the Bank Board generally requires that the moving party demonstrates that the argument, documentation, information, or evidence sought to be admitted or considered was not readily available when the claim was before the Receiver's Representative; or some similar compelling reason why the submission was not included in the Receiver's record.

(c) A motion for leave to supplement the record made after the party's initial submission of a Request for Review or Response, must be supported by good cause demonstrating why the supplemental matter could not have been included with the initial submission.

(d) upon a finding by the Bank Board that the record provides a sufficient basis for rendering a Decision, the record will be closed. The parties will be notified by the Bank Board of the closing of the record.

(e) The Bank Board may make its own findings of fact and conclusions of law based upon the Administrative Record.

§ 576.6 Burden of proof.

The burden of proof rests at all times with the Requestor.

§ 576.7 Issuance of Decision.

Within 180 days from the date the Administrative Record is closed, the Bank Board will issue a Decision on the merits of the Request, determining the extent of entitlement to the claim or any portion thereof. Alternatively, within 30 days from the date that the Administrative Record is closed, the Bank Board, in its sole discretion or based upon the advice or request of the General Counsel, may entertain oral argument, or other supplementary proceedings, in which case a Decision will be issued within 180 days of the completion of such supplementary proceedings.

§ 576.8 Decision in writing.

The Bank Board's Decision ("Decision") will be issued in writing. It will set forth the reasons for the Decision and will constitute final agency action for the purpose of seeking judicial review.

§ 576.9 Denial of claim.

If no Decision is issued by the Bank Board within the time specified in § 576.7 of this part, and the Bank Board has not given notice to the parties requesting review that the Bank Board has in its discretion extended the time limit on its own motion, the Receiver's Determination, issued pursuant to § 57.13(o)(6) of this part, will become the Decision of the Bank Board. This Decision will be final agency action for the purpose of seeking judicial review.

§ 576.10 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any procedural requirements set forth herein may result in dismissal of the Request for Review. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

§ 576.11 Satisfaction of Claim Certificate.

(a) If the Bank Board determines that the claim, or any portion of the claim, is to be allowed, Claimants must, to secure payment, promptly execute and deliver to the Bank Board a "Satisfaction of Claim" certificate, which will be provided to the Claimant with the Decision.

(b) If the Bank Board determines that only a portion of a claim is allowable, the "Satisfaction of Claim" certificate will specify the portion found allowable. A claim or any portion of a claim not specifically allowed by the Bank Board is deemed denied and constitutes a final agency action for purposes of seeking judicial review.

§ 576.12 Procedural questions.

Any questions concerning these Procedures may be addressed, in writing, to:

Adjudication Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

4. Part 577 is added to read as follows:

PART 577—PROCEDURES FOR THE ADMINISTRATION AND DETERMINATION OF REQUESTS FOR EXPEDITED RELIEF FROM DECISIONS OR THREATENED ACTIONS OF THE FSLIC AS RECEIVER

Sec.

Sec.
577.4 Decision.
577.5 Requests for extension of time or waiver of other procedural requirements.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); 48 Stat. 132, as amended (12 U.S.C. 1464); 48 Stat. 1259, as amended (12 U.S.C. 1729).

§ 577.1 Purpose.

Requests for Expedited Relief seek extraordinary intervention by the Federal Home Loan Bank Board [Bank Board] with respect to the Federal Savings and Loan Insurance Corporation [FSLIC] as Receiver. All Requests will be scrutinized for strict compliance with the procedural requirements set forth below. Failure to comply with these requirements may result in denial of the Request.

§ 577.2 How to file a Request for Expedited Relief.

(a) These procedures must be complied with fully and within the prescribed time periods. Any noncompliance or lateness may result in denial of the Request unless a waiver of procedure or an extension of time has been granted for good cause shown. These procedures are fully applicable to the FSLIC as Receiver.

(b) Any decision or threatened action by the FSLIC as Receiver may be the subject of a Request for Expedited Relief seeking extraordinary intervention by the Bank Board outside of the routine claims process. Requests for Expedited Relief must be filed within five work days from the date of the notice of FSLIC as Receiver's decision or threatened action. All Requests for Expedited Relief are deemed to be filed when received and date/time stamped by the Bank Board at the office specified in paragraph (d) of this section. When notice of such a decision or threatened action is delivered by mail, three additional work days will be allowed for the filing of the Request.

Example: A Notice of Foreclosure is a "threatened action" by the FSLIC as Receiver. If the FSLIC as Receiver issues a Notice of Foreclosure dated January 1, of a foreclosure sale scheduled for February 1, the Request for Expedited Relief must reach the Bank Board and be date/time stamped within five work days of January 1. If the FSLIC as Receiver's notice was delivered by U.S. mail, the Request for Expedited Relief must reach the Bank Board and be date/time stamped within eight work days of January 1. Work days are Monday through Friday, excluding weekends and Federal holidays.

(c) All submissions are deemed to be filed when received, and date/time stamped by the Federal Home Loan Bank Board at the office specified in paragraph (d) of this section.

(d) The original and one copy of the Request for Expedited Relief, and any supporting documents, must be filed with:

Federal Home Loan Bank Board, Office of General Counsel, Adjudication Division, 1700 G Street, NW., Washington, DC 20552, Attention: Lead Paralegal.

(e) A copy of the Request for Expedited Relief, and any supporting documents, must be mailed or hand delivered to the Receiver at the address(es) supplied in any decision or notice of threatened action by the FSLIC as Receiver.

(f) All submissions to the Bank Board must include a signed statement certifying that an additional copy has been sent or hand delivered to the FSLIC as Receiver, at the address(es) listed in paragraph (e) of this section, on or before the date the submission was filed with the Bank Board.

§ 577.3 Content of Request for Expedited Relief.

(a) A Request for Expedited Relief does not involve a determination on the merits of a claim. It is solely a request to the Bank Board to intercede by instructing the FSLIC as Receiver to do or to refrain from doing some act. Accordingly, to obtain the relief requested, the Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which Request is based;

(2) A clear and concise statement of any alleged factual and/or errors or omissions made by the FSLIC as Receiver;

(3) Citations to applicable statutes, regulations, or other legal authority;

(4) All relevant documentation that supports the Request;

(5) An assessment of the likelihood of success on the merits of the underlying claim;

(6) A clear and concise statement of the probable imminent and irreparable harm likely to occur if expedited relief is not granted;

(7) A signed statement certifying that the FSLIC as Receiver has been mailed or hand delivered a copy of the Request on or before the day that the Request was filed with the Bank Board.

(b) The FSLIC as Receiver shall file its Response and all supporting documentation within five (5) work days from the date a Request for Expedited Relief is filed with the Bank Board. The time limitations discussed above with regard to delivery by U.S. mail are also applicable to the FSLIC as Receiver. The Receiver's Response shall contain legal and factual arguments in opposition to the Request for Expedited Relief. A copy of that Response and all supporting documentation must be sent or hand delivered to the party requesting expedited relief and the Receiver must certify that it has done so.

(c) The Request for Expedited Relief, the supporting documentation, and the Receiver's Response and supporting documentation, will form the basis for the administrative record on which the Bank Board will make its determination.

§ 577.4 Decision.

(a) The party requesting expedited relief shall be known as the Petitioner.

(b) The burden of proving entitlement to expedited relief rests at all times with the Petitioner.

(c) Upon receipt, the Request for Expedited Relief will be reviewed to assure compliance with all procedural requirements. If the Request is procedurally deficient it may be dismissed and the parties will be so notified.

(d) If the Request is properly filed, is susceptible to resolution by the Bank Board, and no additional information is needed, a Decision on the Request will be issued by the Bank Board as soon as practicable. It will state the reasons for the determiantion and will constitute final agency action for purposes of securing judicial review.

(e) If additional information is required for resolution of the Request, notification in writing will be made by the Bank Board of the need for such information. The Bank Board will order that the information be submitted by a date certain. If no further information is needed for resolution of the Request, a Decision will be issued by the Bank Board as soon as practicable.

(f) Unauthorized supplemental pleadings will not be considered by the Bank Board in the absence of good cause shown. To show good cause for an otherwise unauthorized supplemental pleading, a party must demonstrate the existence of new and material evidence that was not readily available at the time of the initial filing despite the party's due diligence.

(g) If appropriate, the Bank Board may, upon motion of a party or its own motion, issue an Order instructing the FSLIC as Receiver to stay temporarily its threatened action or decision pending resolution of the Request for Expedited Relief ("Order"). Such Order will be granted where necessary to maintain the status quo for the time required for the Bank Board to consider the Request for

Expedited Relief. The issuance of such an Order does not, however, prohibit the FSLIC as Receiver from making any preparations legally required in advance of its threatened action (*e.g.*, reposting foreclosure). Any such stay will remain in full force and effect for a period of time sufficient to enable the party requesting relief to be provided with the Bank Board's Decision and an opportunity to seek judicial review of that Decision. Such time will be at least five (5) work days from the date of the Decision where delivery of the Bank Board's Decision is by express (overnight) delivery service and eight (8) work days if by certified or regular U.S. mail.

§ 577.5 Requests for extension of time or waiver of other procedural requirements.

Failure to comply with any of the procedural requirements set forth herein may result in denial of the Request for Expedited Relief. However, reasonable requests for extensions of time or waiver of other procedural requirements may be granted upon a showing of good cause.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-25073 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 88-AEA-7]

Alteration of Jet Route; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment alters the description of Jet Route J-217 located in the vicinity of Hancock, NY. A segment of J-217 west of the Keating, PA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) is never used or requested. This amendment revokes that segment between the Keating VORTAC and the Grace, PA, intersection. This action reduces chart clutter.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On August 17, 1988, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of J-217 by revoking a route segment between the Keating VORTAC and the Grace intersection (53 FR 31018). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA/ No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations revokes a segment of J-217 between the Keating VORTAC and the Grace intersection. This segment of J-217 is never used or requested. This action reduces chart clutter.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-217 [Revised]

From Hancock, NY to Keating, PA.

Issued in Washington, DC, on October 17, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-25032 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26217, File No. S7-17-88]

Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Future Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Rule 3a12-8 under the Securities Exchange Act of 1934 to designate government debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany as "exempted securities" for purposes of the marketing and trading in the United States of futures contracts on those securities. Rule 3a12-8 currently grants such an exemption to British, Canadian, Japanese, Australian, French, and New Zealand government debt securities underlying futures contracts that meet certain conditions set forth in the Rule. The amendment will extend the exemption to government securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany, thereby removing such securities from those on which futures trading is prohibited by the Commodity Exchange Act. Trading the underlying securities, absent compliance with applicable registration and other requirements, will remain prohibited to the same extent as under current federal securities law.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Underhill, Esq., 202/272-2375, Division of Market Regulation, Securities and Exchange Commission, Room 5186 (Mail Stop 5-1), 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), futures trading on an individual security is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC" or "Commission") adopted and later amended Rule 3a12–8 ("Rule") under the Exchange Act to designate debt securities of Great Britain, Canada, Japan, Australia, France, and New Zealand (the "six designated sovereign issuers") as "exempted securities" under the Exchange Act solely for purposes of marketing and trading futures on those securities in the United States. In effect, the designation of those securities as exempted securities removes the CEA's prohibition against marketing and trading futures on those securities in the United States, so long as the other terms of the Rule are satisfied. The Commission today adopts an amendment to the Rule. The amendment adds the debt securities of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany (the "seven newly designated sovereign issuers") to the list of designated foreign government securities exempted by the Rule. To qualify for the exemption, futures contracts on securities of the newly designated sovereign issuers will have to meet all the other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982,[1] prohibits the trading of futures contracts on individual securities unless those securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[2] Because foreign government securities are not exempted securities under either of these sections, the CEA prohibition against trading futures on individual securities prevents the marketing and trading of futures on such foreign government securities in this country. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted security" includes

> such other securities * * * as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984, pursuant to section 3(a)(12) under the Exchange Act, the Commission promulgated Rule 3a12–8.[3] The Rule, as amended,[4] designates British, Canadian, Japanese, Australian, French, and New Zealand government securities that meet certain conditions as "exempted securities" under the Exchange Act. The purpose of the Rule is to permit certain exchange-traded futures contracts on the designated foreign government securities to be marketed and traded in the United States.[5] Under the Rule, government debt securities of the six designated sovereign issuers are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) The securities are not registered in the United States; (2) the futures contracts require delivery outside the United States; and (3) the futures contracts are traded on a board of trade.[6]

Rule 3a12–8 was promulgated in response to Congress' understanding, in approving the 1982 amendments to the CEA, that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar British government bond futures[7] and that administrative action would be taken to allow the sale of these futures contracts in the U.S.[8] In promulgating the Rule, the Commission implemented Congress' intent without abandoning its longstanding policy of subjecting foreign government securities, for most purposes, to the requirements of the federal securities laws. Accordingly, the conditions set forth in the Rule are designed to ensure that a domestic market in unregistered foreign government securities does not develop and that futures markets in these instruments are not used to avoid the registration and other provisions of the federal securities laws.

At the time the Commission originally proposed Rule 3a12–8, it recognized that, should the securities of additional governments become subject to futures trading, it could become necessary to amend the Rule to include those securities.[9] Subsequently, the Commission amended the Rule to include Japanese, Australian, French, and New Zealand government debt.

On September 29, 1988, the London International Financial Futures Exchange, Ltd. ("LIFFE") began trading a Deutschmark-denominated German government bond futures contract (or "Bund" contract). The Commission staff has been informed that U.S. citizens, particularly institutional investors, are interested in trading this new product and has received a request that Rule 3a12–8 be amended accordingly.[10] As the world's securities markets become increasingly internationalized, the Commission expects to receive additional petitions for exemptive relief. As an alternative to continuing to amend the Rule on a country-by-country basis, the Commission, on August 16, 1988, issued a release ("1988 Proposal Release") proposing to amend the Rule by adding debt securities issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, and West Germany to the Rule's list of designated foreign government securities.[11]

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[1] Pub. L. No. 97–444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.*

[2] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v) (1982), provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act * * * or section 3(a)(12) of the * * * Exchange Act * * *."

[3] *See* Securities Exchange Act Release No. 20708, March 2, 1984, 49 FR 8595 ("Adopting Release"), and 19811, May 25, 1983, 48 FR 24725 ("1983 Proposal Release").

[4] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 3. The Rule was amended in 1986 to include Japanese government securities. *See* Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25998. In 1987, the Rule was amended to include debt securities issued by Australia, France, and New Zealand. *See* Securities Exchange Act Release No. 25072, October 29, 1987, 52 FR 42277.

[5] As discussed above, without this designation the trading of futures on these securities in the United States would be prohibited by section 2(a)(1)(B)(v) of the CEA.

[6] A requirement that the board of trade be located in the country that issued the underlying debt securities has been eliminated. *See* Securities Exchange Act Release No. 24209, March 12, 1987, 52 FR 8875.

[7] *See* 1983 Proposal Release, *supra* note 3, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

[8] In extending the exemption to futures on Canadian, Japanese, Australian, French, and New Zealand government debt securities, the Commission noted that there did not appear to be any legal or regulatory reason for treating them differently from British sovereign debt futures.

[9] *See* 1983 Proposal Release, *supra* note 3, 48 FR at 24726–27.

[10] *See* letter from Brooksley Born, Arnold & Porter, to Howard L. Kramer, Assistant Director, Division of Market Regulation, SEC, dated June 3, 1988.

[11] *See* Securities Exchange Act Release No. 25998, August 16, 1988, 53 FR 31709. The countries proposed to be added to Rule 3a12–8 in the 1988

Continued

III. Discussion

The Commission received seven comment letters in response to the 1988 Proposal Release, including two from the same commentator.[12] Four of the six commentators endorsed or expressed no objection to adding the eight countries included in the 1988 Proposal Release to the list of countries covered by the Rule.[13] Norway and Sweden, however, objected to the exemption of their sovereign debt securities for purposes of futures trading thereon, citing their respective currency restrictions.[14]

The Commission also solicited comment in its 1988 Proposal Release on whether under the proposal the information available in English regarding newly-eligible futures contracts and underlying sovereign debt would be adequate to permit U.S. investors to make informed investment decisions.[15] The two commentators that addressed this issue argued that U.S. investors should have sufficient access to information in English concerning the relevant futures markets and underlying debt instruments.[16]

In addition, the Commission solicited comment on whether there are any legal or policy reasons for determining that debt securities issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, or West Germany should not be accorded the same treatment for purposes of futures trading in the U.S. as are debt securities issued by the six designated sovereign issuers. The one commentator that addressed this issue stated that there did not appear to be any valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt issued by Austria, Denmark, Finland, the Netherlands, Norway, Sweden, Switzerland, or West Germany.[17]

Based on the comment letters received and for the additional reasons discussed below, the Commission has determined that Rule 3a12–8 should be amended to include the debt obligations of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. The Commission agrees that there are no valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt securities issued by the six newly-designated sovereign issuers and that the availability of these new hedging vehicles will allow investors to take advantage of the growing globalization of the securities markets. Due in large part to this trend toward internationalization, U.S. investors should have ready access to information in English concerning the markets and government securities of the six newly-designated sovereign issuers. It also is important to note that the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, that the futures contracts require delivery outside the United States,[18] and that the contracts be traded on a board of trade) will apply to futures contracts on debt securities issued by the six newly-designated sovereign issuers. This should ensure that the federal securities laws will not be subverted by the marketing and trading of futures on additional government securities in this country.[19]

The Commission has determined not to add Norway and Sweden to the Rule's list of eligible sovereign issuers. As noted above, Norway and Sweden

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Proposal Release are those countries not covered currently by the Rule but which would have qualified pursuant to a generic rating standard amendment proposed by the Commission last year. *See* Securities Exchange Act Release No. 24428, May 5, 1987, 52 FR 18237. The rating standard amendment would have added to the Rule's list of exempted securities all debt instruments issued by a country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations.

[12] Letters were received from the following: Jorgen Holmquist, Financial Counselor, Embassy of Sweden, dated September 9, 1988 ("Sweden Letter") and October 18, 1988; Brooksley Born, Arnold & Porter, dated September 13, 1988 (on behalf of LIFFE) ("Arnold & Porter Letter"); Laurids Mikaelson, Minister (Economic Affairs), Embassy of Denmark, dated September 19, 1988; Robert H. Weiss, Vice President and Associate General Counsel, Shearson Lehman Hutton, dated September 19, 1988 ("Shearson Letter"); Arve Thorvik, Counselor of Economic Affairs, Embassy of Norway, dated September 20, 1988 ("Norway Letter"); and Ian M. de Jong, Counselor (Economic), Embassy of the Netherlands, dated September 21, 1988 ("Netherlands Letter"). The second letter from Sweden was submitted in response to a Commission staff request for clarification of the first letter.

[13] Denmark and the Netherlands stated that they have no objections to the amendment contained in the 1988 Proposal Release. Indeed, the Netherlands applauded such an amendment as contributing to a "further integration of financial markets." Netherlands Letter, *supra* note 12, at 1. Arnold & Porter commented in support of U.S. trading of LIFFE's German Bund contract by noting that the German debt market is very active in Europe and that there is a large U.S. interest in futures contracts on West German sovereign debt securities. Arnold & Porter also argued that amending the Rule to include sovereign debt securities of additional countries other than West Germany would reduce delays and Commission administrative burdens that could arise if new sovereign debt futures contracts were developed. Arnold & Porter Letter, *supra* note 12, at 3–7. Finally, Shearson supported the proposed amendment to the Rule, but argued that all sovereign debt should be exempted from purposes of futures trading thereon.

[14] In particular, Norway cited its policy of limiting "the role of the Norwegian kroner as an international transaction and investment currency * * * ." Norway Letter, *supra* note 12, at 1. Sweden noted that its currency controls prohibiting non-residents from holding Swedish kroner-denominated securities would preclude development of a market for physically-settled futures on such securities and that "[i]n any case it is not in the interest of the Swedish government that such a market develops." Sweden Letter, *supra* note 12, at 1.

[15] In adopting Rule 3a12–8 the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting Release, *supra* note 3, 49 FR 8597–98. At the time Rule 3a12–8 was adopted, both the United Kingdom and Canada had government debt issues registered in the U.S. As a result, although those particular issues were not the subject of U.S. futures trading, U.S. investors had relevant disclosure materials concerning the issuers, *i.e.*, the governments of Canada and the United Kingdom. In addition, Australia and New Zealand had government debt issues registered in the U.S. when they were added to the Rule's list of eligible issuers. The Japanese and French governments, however, had not registered any securities in the U.S. when they were added to the Rule. Of the new countries that will become eligible under the current amendment, only Austria and Denmark currently have government debt securities registered in the U.S.

[16] Arnold & Porter Letter, *supra* note 12, at 5–6; Shearson Letter, *supra* note 12, at 1. Arnold & Porter stressed the availability of information regarding West German Bund futures contracts traded on LIFFE, the underlying German sovereign debt securities, and the "general creditworthiness of the German government so as to allow U.S. investors knowledgeably to trade futures on Bunds." Arnold & Porter Letter, *supra* note 12, at 5–6.

[17] *See* Shearson Letter, *supra* note 12, at 1. The Commission also solicited comments on possible procedures or standards pursuant to which it could exempt the debt securities of additional countries without having to do so on a country-by-country basis, including the generic rating standard approach proposed originally in May 1987 (*see* note 11, *supra*) and a standard based on volume and depth of trading in a sovereign issuer's debt. In response, one commentator, Shearson Lehman Hutton, argued that all sovereign debt securities should qualify for the exemption provided by Rule 3a12–8. *See* Shearson Letter, *supra* note 12, at 2–3.

[18] Although the only futures contract likely to be eligible immediately for sale in the United States once the amendment is adopted is the physically-settled West German bond futures contract traded on LIFFE, the Commission in the past has stated that cash-settlement would be consistent with the Rules' requirement that delivery occur outside the United States *See* Securities Exchange Act Release No. 25072, October 29, 1987, 52 FR 42277, at 42279 n.19.

[19] The marketing and trading of foreign futures contracts also is subject to regulation by the CFTC. In particular, section 4(b) of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, while Rule 30.02 (18 CFR 30.02), promulgated under section 2(a)(1)(A) of the CEA, is intended to a prohibit fraud in connection with the domestic offer and sale of futures contracts executed on foreign exchanges. In addition, the CFTC recently adopted a series of regulations governing the domestic offer and sale of futures and options contracts traded on foreign boards of trade. The rules, which became effective on January 4, 1988, but which have not been fully implemented pending CFTC review of petitions for exemption, require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 52 FR 28980 (August 5, 1987).

objected to the exemption of their sovereign debt securities for purposes of futures trading thereon. Although the Commission believes that trading of Norwegian and Swedish sovereign debt securities could become active enough to support development of a futures market on such securities, as a matter of international comity the Commission will not add Norwegian and Swedish sovereign debt securities to those exempted by the Rule.[20]

IV. Cost/Benefit Analysis

In connection with the 1988 Proposal Release, the Commission noted that there do not appear to be any costs associated with the amendment adopted today. While the rule is being expanded to exempt the debt of additional countries, the Rule continues to include safeguards designed to protect U.S. investors by preventing unregistered bonds issued by the six newly-designated sovereign issuers from entering the country and by requiring that futures on those bonds be traded on boards of trade. In addition, the amendment imposes no recordkeeping or compliance burden in itself and merely provides an exemption under the federal securities laws. The principal benefit associated with the amendment is that it will allow U.S. investors to trade a greater range of futures contracts on foreign government debt. The Commission received no comments on the costs and benefits of the amendment to Rule 3a12–8.

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,[21] the Chairman of the Commission certified in connection with the 1988 Proposal Release that the amendment to Rule 3a12–8, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

VI. Effects on Competition and Other Findings

Section 23(a)(2) of the Exchange Act[22] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendment to Rule 3a12–8 in light of the standards cited in section 23(a)(2) and believes that adopting of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of futures on the sovereign debt securities of the six newly-designated countries that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the U.S. and enhances competition in financial markets. Insofar as the Rule contains limitations, they are designed to promote the purposes of the exchange Act by ensuring that futures trading on government securities of the six newly-designated sovereign issuers is consistant with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the U.S.

The Commission finds, in accordance with the Administrative Procedure Act,[23] that the amendment to Rule 3a12–8 is exemptive in nature. Accordingly, the Commission has determined to make the foregoing action effective immediately upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Adopted Amendment

The Commission is amending Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

2. Section 240.3a12–8 is amended by removing the word "or" from (a)(1)(v), replacing the period with a semi-colon at (a)(1)(vi), and adding paragraphs (a)(1) (vii) through (xii) as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *
(1) * * *
(vii) Austria;
(viii) Denmark;
(ix) Finland;
(x) The Netherlands;
(xi) Switzerland; or
(xii) West Germany.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: October 26, 1988.

[FR Doc. 88–25120 Filed 10–28–88; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Programs

AGENCY: United States Information Agency.

ACTION: Policy statement.

SUMMARY: The regulation found at 22 CFR 514.31 regarding requests for waivers of the home-country physical presence requirements of the Immigration and Nationality Act, as amended, does not provide for an appeal, reconsideration or reopening of an Agency decision not to recommend a waiver of the two-year home residency requirement to the Attorney General. Accordingly, the Agency will no longer accept appeals or requests for reopening, review, or reconsideration from aliens seeking hardship waivers or interested Government agency waivers.

EFFECTIVE DATE: October 31, 1988.

ADDRESS: Merry Lymn, Assistant General Counsel, Room 700, United States Information Agency.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, United States Information Agency, Office of the General Counsel, 301 4th Street, SW., Room 700, Washington, DC 20547; (202) 485–8829.

SUPPLEMENTARY INFORMATION: Under the Immigration and Nationality Act, section 212(e), a person who was admitted to the United States under section 101(a)(15)(j) or who acquired such status after admission, must reside in and be physically present in the country of his or her nationality or last legal permanent residence for an aggregate of two years following departure from the United States in

[20] The Commission specifically reserves the right to consider exempting such debt securities under the Rule in the future. In addition, although the amendment approved today should obviate the need to amend Rule 3a12–8 in the near future, the Commission will continue to consider possible procedures or standards pursuant to which it could exempt the debt securities of additional countries other than on a country-by-country basis.

[21] 5 U.S.C. 605(b) (1982).

[22] 15 U.S.C. 78w(a)(2) (1982).

[23] 5 U.S.C. 553 (1982).

order to be eligible to apply for an immigrant visa, for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) if (1) the person's participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly by the Government of the United States or the Government of his or her nationality or last legal residence, (2) who at the time of admission is engaged in a skill on the skills list for the country of nationality or last legal residence, or (3) who came to the United States or acquired such status in order to receive a graduate medical education. The section also provides that the Attorney General may waive the two-year home residency requirement if the United States Information Agency recommends such waiver "pursuant to the request of an interested United States Government Agency, or of the Commissioner of Immigration and Naturalization, after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that alien cannot return to the country * * * because he would be subject to persecution on account of race, religion, or political opinion * * *" The law also provides that a waiver may be granted to all except those who came to the United States for graduate medical education or training if the alien's country furnishes a statement of no objection.

Under the statute the request for a recommendation from the United States Information Agency comes from either an interested United States Government agency or the Commissioner of the Immigration and Naturalization Service. Requests are not to come directly to the United States Information Agency.

The regulations promulgated by the Immigration and Naturalization Service found at 8 CFR 212.7(c) provide that waiver applications based upon hardship be made directly to the Immigration and Naturalization Service. Upon meeting the standards imposed by those regulations and a finding of hardship being made, the Immigration and Naturalization Service requests a recommendation from United States Information Agency as to whether to grant or deny the waiver. The Immigration and Naturalization Service is the only party before the United States Information Agency. The communication comes from the Immigration and Naturalization Service. The United States Information Agency responds to the Immigration and Naturalization Service. In this regard, the Immigration and Naturalization Service Operations Instructions at 212.8 provide:

> The recommendation of the Director, United States Information Agency, made in any section 212(e) case will be sent directly to the district director having jurisdiction over the exchange alien's place of temporary residence in the United States, or over his last place of residence in the United States if the alien is abroad. The district director shall inform the exchange alien of the decision and furnish a copy of it to the General Counsel, United States Information Agency, Washington, DC 20547 and the interested United States agency. When the waiver application is approved and the applicant intends to apply for a visa, the alien shall be instructed to present the district director's decision to the consul as a part of the visa application. When the waiver application is denied, notwithstanding a favorable recommendation from the Director, USIA, the alien, any interested agency, and the General Counsel, United States Information Agency, shall be notified of the denial of the application, of the reasons and of the right of appeal when appropriate. (See 8 CFR 212.7(e)).

Additionally, 8 CFR 212.7(c)(10) precludes appeal from cases denied a favorable recommendation by this Agency. The proper forum for review of a waiver denial based upon a negative USIA opinion is to request that the Immigration and Naturalization Service reconsider the waiver pursuant to 8 CFR 103.5. The INS will, if new facts are presented warranting review, send a new I-613 to USIA for a second opinion. Thus, any appeal is to be made to the Immigration and Naturalization Service, not to the United States Information Agency.

When an interested United States Government agency requests a waiver, the head of such agency submits a request to the United States Information Agency. The interests of the United States Government are at issue. The interests of the subject alien are not before the United States Information Agency, and the alien is not a party to the proceeding. Should the United States Information Agency recommend denial of the waiver request, the interested government agency is the appropriate party to appeal, not the alien.

The only situation in which the alien is a party before the United States Information Agency, is a case in which there is no objection to the waiver by the home country.

The United States Information Agency regulations do not provide for appeal in any case. Rather, the agency has established a Waiver Review Board to which certain types of cases are referred as a part of the internal administrative decision-making process. These cases include:

> * * * Cases involving requests of interested United States Government agencies, in which the recommendation of the Supervisory Attorney is unfavorable; cases in which another federal agency has provided the Agency with a written opposition to a waiver in which the recommendation to the Supervisor Attorney is favorable; cases in which a "no objection" letter from the Government of the exchange visitor's country or nationality or last legal residence appears in the file and whose participation in any program is financed by the United States Government in an amount under $2000, and as to which the recommendation of the Supervisory Attorney is unfavorable, except for an exchange visitor who received graduate medical education; cases involving claims of probable persecution on the ground of race, religion, political opinion, nationality, or membership in a particular social group, in which the Department of State has provided the Agency with a written opinion that there is no genuine basis for a claim of probable persecution on the ground alleged, and in which the recommendation of the Supervisory Attorney is favorable; and cases in which for any reason the Supervisory Attorney requests Exchange Visitor Waiver Board review of his or her recommendation. The Agency's complete file in any such case shall be referred to the Exchange Visitor Waiver Board. The Exchange Visitor Waiver Board shall review the program, policy and foreign relations aspects of the case, and shall prepare and transmit to the Attorney General or his or her designee a recommendation which, whether favorable or unfavorable, shall constitute the final recommendation of the Agency.

Consequently, cases which should go to the Waiver Review Board go automatically to the Board for review, without a request from the alien.

Nonetheless, the Agency is inundated with requests for reconsideration, review, re-reconsideration, re-review, ad infinitum. Some parties request review of their file several times. While there is no provision for these reviews, the agency has tried to accommodate as many people as possible and has reviewed files over and over. This accommodation has resulted in a six

month backlog of applications. In other words, an alien applying for a waiver must wait six months to learn if his or her file needs supplementation before it is even considered. In an attempt to reduce the backlog, additional staff has been hired. However, aliens continue to press for reviews and re-reviews of their files. The reviews are undertaken even though no new evidence has been placed in the file warranting review. Consequently, few files are ever closed (unless the waiver is granted) and the backlog continues to grow. Additionally this practice has caused administrative problems at the Immigration and Naturalization Service.

Upon review of the entire situation, the Agency has determined that it is not in anyone's interest to keep case files open indefinitely.

The Agency has also determined that there is no provision in the Agency regulations for such a review. On the other hand, there is adequate provision for review if undertaken in accordance with specified procedures. When a difficult case of the type specified in the regulation is before the Agency, a review is automatically referred to the Board, without a request. In the case of hardship, the Immigration and Naturalization Service has adequate provision for appeal. See 8 CFR 103.5 wherein procedures for reopening or reconsidering applications are set forth. Should the Immigration and Naturalization Service determine that reopening or reconsideration is warranted under its procedures, the Immigration and Naturalization Service will forward the case to the United States Information Agency. The United States Information Agency will no longer consider appeals by individuals who have not followed the procedures set forth in lawfully promulgated regulations.

Accordingly, all requests to reopen, reconsider, appeal, or otherwise review any decision in a waiver case by the United States Information Agency, made directly to United States Information Agency by anyone other than an appropriate United States Government Agency (except aliens in "no objection" cases) will automatically be returned to sender. The file will not be reviewed.

List of Subject in 22 CFR Part 514

Cultural exchange programs.

Dated: October 13, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-25140 Filed 10-28-88; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 510

[Docket No. R-88-1414; FR-2553]

Section 312 Rehabilitation Loan Program; Removal of Risk Premium and Application Fee Provisions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The rule removes 24 CFR 510.34 and 510.36, which are the Department's regulations on the policies and procedures governing premiums to be charged to offset loan default risks and fees charged for applications approved under the Section 312 Rehabilitation Loan Program. Section 518(b) of the Housing and Community Development Act of 1987 prohibits the Federal government from imposing risk premiums or loan fees on loans made under section 312 of the Housing Act of 1964.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Richard Burke, Office of Urban Rehabilitation, Department of Housing and Urban Development, Room 7168, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-5327. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 518(b) of the Housing and Community Development Act of 1987 amended section 312(g) of the Housing Act of 1964 to prohibit the Department or any other Federal agency from imposing a risk premium or loan fee on loans made under section 312 after February 5, 1988. In 1985, HUD established a loan risk premium of one percent to offset losses from loan defaults (24 CFR 510.34) and an application fee of $200 for single-family loans and $300 for all other loans to offset administrative costs incurred by HUD under the program (24 CFR 510.36). (See 50 FR 38791 (Sept. 25, 1985)). With the enactment of section 518(b), these regulations are now obsolete. The purpose of this rule is to remove 24 CFR 510.34 and 510.36 from the Code of Federal Regulations.

The subject matter of this rulemaking action relates to implementing a statutory provision that renders HUD regulations obsolete and unenforceable and is therefore exempt from the notice and public comment requirements of section 533 of the Administrative Procedure Act (5 U.S.C. 553). The rule merely removes the obsolete and unenforceable regulations from the Code of Federal Regulations.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974, 42000), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Section 312 Rehabilitation Loan Program is listed in the Catalog of Federal Domestic Assistance as program number 14.220.

List of Subjects in 24 CFR Part 510

Loan programs—housing and community development, Relocation assistance, Urban renewal.

Accordingly, the Department amends 24 CFR Part 510 as follows:

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

1. The authority citation for 24 CFR Part 510 continues to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 510.34 [Removed and Reserved]

2. Section 510.34 is removed and reserved.

§ 510.36 [Removed and Reserved]

3. Section 510.36 is removed and reserved.

Dated: October 21, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88-25109 Filed 10-28-88; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8233]

Income Taxes; Investment Tax Credit for Qualified Rehabilitation Expenditures; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8233, which was published in the **Federal Register** for Tuesday, October 11, 1988 (53 FR 39589). The final regulations relate to an investment tax credit for qualified rehabilitation expenditures to qualified rehabilitated buildings.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler, 202-566-3822 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance to taxpayers in the application of sections 46, 48 and 191 of the Internal Revenue Code of 1986. Changes to the applicable law were made by the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986.

Need For Correction

As published, T.D. 8233 contains a typographical error and an omission.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8233), which was the subject of FR Doc. 88-23219, is corrected as follows:

§ 1.148-12 [Corrected]

Paragraph 1. In § 1.48-12 (c)(3)(ii)(A)(*2*), page 39599, column 1, eighteenth line, the language "used (or placed in Service) prior to the" is corrected to read "used (or placed in service) prior to the".

Paragraph 2. In § 1.48-12(c)(8)(i), page 39600, column 2, ninth line, the language "of 168(g) applies to such expenditure by" is corrected to read "of section 168(g) applies to such expenditure by".

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88-25112 Filed 10-28-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Approval of Amendments to the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Missouri as modifications to the State's permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments incorporate changes to the Missouri regulations in the areas of prime farmland, coal exploration, small operator's assistance program (SOAP), two-acre exemption, inspection and enforcement, experimental practices, definitions, alternative bonding system, revegetation success, permit acreage fees, use of explosives, general revenue fund prohibition, and State law stringency. These changes are being made to maintain the State's consistency with SMCRA and the Federal regulations, to clarify requirements, and to incorporate additional flexibility provided by the revised Federal rules.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980 (45 FR 77017). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning proposed amendments are codified at 30 CFR 925.15 and 925.16.

II. Submission of Amendments

On December 14, 1987, (Administrative Record No. MO-353) and on December 18, 1987, (Administrative Record No. MO-354) the State of Missouri submitted amendments to its approved regulatory program. The proposed regulations amend Chapters 4, 6, 7, and 8 of Division 40—Land Reclamation Commission (LRC), Title 10—Department of Natural Resources, of the Missouri Code of State Regulations (CSR). The amendments also revise sections 444.730, 444.800, 444.805, and 444.950 of the Revised Statutes of Missouri (RSMo).

These revisions are proposed by Missouri in response to: (1) A June 11, 1986, letter (Administrative Record No. MO-295) under 30 CFR Part 732 from OSMRE, concerning regulatory reform; (2) a June 9, 1987 letter (Administrative Record No. MO-364) under 30 CFR Part 732 from OSMRE concerning the protection of historic, cultural, and archaeological resources during coal exploration in accordance with the revised Federal regulations promulgated February 10, 1987, (52 FR 4244); (3) Public Law 100-34 and the OSMRE notice of suspension that repealed the two-acre exemption published in the June 4, 1987, **Federal Register** (52 FR 21228); (4) a January 30, 1986, letter from OSMRE (Administrative Record No. MO-351) under 30 CFR Part 732 concerning the adequacy of the Missouri alternative bonding system; and (5) a required program amendment at 30 CFR 925.16(j) concerning revegetation success during the intitial program. Missouri has also chosen to revise some of its statutes and regulations to increase flexibility and clarify existing regulations.

The amendment revises: 10 CSR 40-2.090(6)(B), Revegetation Requirements; 10 CSR 40-3.050(1)(E) and 10 CSR 40-3.210(1)(E), Surface and Underground Requirements for the Use of Explosives; 10 CSR 40-4.010, Coal Exploration Requirements; 10 CSR 40-4.030, Operations on Prime Farmland; 10 CSR 40-6.010(6)(A), General Requirements for Permits, Permit Applications, and

Coal Exploration; 10 CSR 40–6.020, General Requirements for Coal Exploration, Permits; 10 CSR 40–6.040(16) and 10 CSR 40–6.110(16), Surface and Underground Prime Farmland Investigation; 10 CSR 40–6.060(1) (E), (G), (J), and (K), Experimental Practices; 10 CSR 40–7.021(4)(B), Duration and Release of Reclamation Liability; 10 CSR 40–8.010(1)(A), Definitions; 10 CSR 40–8.030(3)(B), Inspection and Enforcement; 10 CSR 40–8.050, Small Operators Assistance; 10 CSR 40–8.070(2), Applicability; and §§ 444.730, 444.800, 444.805, and 444.950 RSMo 1986 of Missouri statute related to mining.

The Director announced receipt of the proposed amendment in the February 26, 1988, **Federal Register** (53 FR 5804) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No public comments were received by March 28, 1988, the close of the comment period. The public hearing, scheduled for March 22, 1988, was not held because no one requested an opportunity to testify.

Following a thorough review of the Missouri amendments, OSMRE notified that State on April 20, 1988 (Administrative Record No. MO–380), of its concerns regarding several provisions in the areas of applicability, prime farmland, and definitions. These concerns identified changes that appeared to be less effective than the Federal regulations. On May 10, 1988 (Administrative Record No. MO–377), Missouri informed OSMRE that it plans to address these concerns during future rulemakings.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the Missouri program amendments submitted on December 14 and 18, 1987, meet the requirements of SMCRA and 30 CFR Chapter VII, except as discussed below. Only those provisions of particular interest are discussed below. Any provisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations, although the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and his ongoing oversight of the Missouri program. Provisions that are not discussed either contain language similar to the corresponding Federal regulations, lack a Federal counterpart, on involve provisions that add specificity, and that do not adversely affect other aspects of the program.

1. Operations on Prime Farmlands

a. 10 CSR 40–4.030(4)(A): Applicability

The proposed amendment at 10 CSR 40–4.030(4)(A) would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads of surface mining activities. The Federal regulation excluding these activities, 30 CFR 823.11(a), was remanded by the U.S. District Court for the District of Columbia decisions *IN RE: Permanent Surface Mining Regulation Litigation II,* Civil Action No. 79–1144 (PSMRL II).

The Director finds the exemption from prime farmland performance standards to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40–4.030(4)(A). Missouri will be required to amend this regulation to comply with the court's ruling.

b. 10 CSR 40–4.030(b)(B): Water Bodies on Prime Farmland

The proposed amendment at 10 CSR 40–4.030(4)(B) would allow Missouri to approve land use changes from cropland that is prime farmland to water bodies. The District Court (PSMRL II) held that the Federal regulations at 30 CFR 823.11(b) provided an impermissibly broad variance from the post-mining use of cropland qualifying as prime farmland. This type of land use change is not allowable.

The Director finds the land use change from cropland designated as prime farmland to water bodies to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40–4.030(4)(B). Missouri will be required to amend this regulation to comply with the court's ruling.

c. 10 CSR 40–4.030(7)(B)6: Productivity on Prime Farmland

The proposed amendment at 10 CSR 40–4.030(7)(B)6 outlines the selection process for determining those crops to be used for proof of productivity on prime farmland. The crops must be commonly grown in the county of the permit area. The crop planted on the most acreage within the county must be utilized for at least one of the three years necessary to prove productivity. An exception to this is hay crops. If a hay crop is planted to the most acreage in a county, then the crop with the second largest acreage must be utilized for proof of productivity in at least one of the three years during crop measurement. The amendment does not, however, require that the row crop with greatest rooting depth be chosen as one of the reference crops as required at 30 CFR 823.15(b)(6).

The Director finds the method of reference crop selection at 10 CSR 40–4.030(7)(B)6 to be less stringent than SMCRA and less effective than the Federal regulations. Missouri will be required to amend this regulation to be no less effective than 30 CFR 823.15(b)(6).

2. 10 CSR 40–8.010(1)(A)18: Definitions

The proposed amendment at 10 CSR 40–8.010(1)(A)18 includes as part of the definition of "coal processing plant" and "coal preparation plant" the requirement that such a facility separate coal from its impurities. This definition is impermissibly narrow as compared to the revised rule promulgated by OSMRE on May 11, 1987 (52 FR 17724). As defined at 30 CFR 701.5, a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation is regulated, even if it does not separate coal from its impurities.

The Director finds the definition of "coal processing plant" and "coal preparation plant" to be less stringent than SMCRA and less effective than the Federal regulations, and is disapproving the amendment to 10 CSR 40–8.010(1)(A)18. Missouri will be required to amend this regulation to be no less effective than the definition of "coal preparation plant" at 30 CFR 701.5.

3. 10 CSR 40–2.090(6)(B): Revegetation Requirements

Missouri amends 10 CSR 40–2.090(6)(B) to add a requirement that the revegetation success standard be met for 2 growing seasons in order to respond to a required program amendment at 30 CFR 925.16(j) concerning 30 CFR 715.20(f).

The amended revegetation success standard makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment of 10 CSR 40–2.090(6)(B) to be no less stringent than SMCRA and no less effective than the Federal regulations.

4. 10 CSR 40–6.020(3) (B)8 and (D)2: Coal Exploration

Missouri amends 10 CSR 40–6.020(3) (B)8 and (D)2 to require that applications include cultural, historic, and archaeological resources within the proposed exploration area as required in a June 9, 1987, letter (Administrative Record No. MO–364) under 30 CFR Part 732 from OSMRE concerning 30 CFR 772.12(b)(8).

The application requirement amendments make the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment of 10 CSR 40–6.020(3)(B)8 and (D)2 to be no less stringent than SMCRA and no less effective than the Federal regulations.

5. 10 CSR 40–8.070(2)(B): Two-Acre Exemption Repeal

Missouri amends 10 CSR 40–8.070(2)(B) by removing the two-acre exemption from surface coal mine regulation. On May 7, 1987, the President signed Pub. L. 100–34 repealing the two-acre exemption in all Federal and State programs. The requirements of SMCRA now apply to all surface coal mining operations regardless of size, unless exempt under some other provision. On June 4, 1987 (52 FR 21228), OSMRE published a notice of suspension for 30 CFR 700.11(b), making the Federal regulation consistent with SMCRA.

The exemption removal amendment makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds the amendment to 10 CSR 40–8.070(2)(B) to be no less stringent than SMCRA and no less effective than the Federal regulations.

6. 10 CSR 40–6.020 (7) and (8): Coal Exploration Bonding

Missouri amends 10 CSR 40–6.020 (7) and (8) to require a reclamation bond for all coal exploration permits and to identify conditions for their release. A bond of $5,000 per acre is required when 250 tons of coal or less will be removed. A bond calculated at a rate sufficient to complete reclamation as performed by the commission is required where more than 250 tons of coal will be removed. The bonding requirements of 30 CFR Part 800 apply only to surface mining and reclamation operations; thus, OSMRE does not have a comparable regulation to Missouri's requirement for coal exploration bonding.

The Director finds that the amendment to 10 CSR 40–6.020 (7) and (8) is not inconsistent with SMCRA and the Federal regulations because it has adopted requirements that are more stringent than the requirements of 30 CFR Part 800.

7. Section 444.950: Bonding

Missouri amends its statutes at § 444.950 RSMo 1986 by requiring a bond of no more than $10,000 per acre for the coal preparation area. Missouri has an alternative bonding system that divides the reclamation liability between the operator reclamation bond for Phase I reclamation and the reclamation trust fund for Phase II and Phase III. This amendment would increase the operator bond on coal preparation areas for Phase I reclamation from $2,500 per acre to $10,000 per acre. The amendment is a partial response to a January 30, 1986, letter (Administrative Record No. MO–351) under 30 CFR Part 732 concerning 30 CFR 800.11(e) (1) and (2). This amendment is one of several measures yet to come that are designed to address the concerns of that letter.

The Director finds, based on the above discussion, that the above amendment, as proposed by Missouri, is a significant improvement to the Missouri alternative bonding system. The amendment, as proposed, is an adequate partial response to OSMRE's January 30, 1986, letter pursuant to 30 CFR 732.17(d) and is consistent with SMCRA and the Federal regulations because it provides a substantial economic incentive for the permittee to comply with the reclamation provisions.

8. Section 444.805: Definitions

Missouri amends its statutes at § 444.805 RSMo 1986 to add definitions of "coal preparation area" and "coal preparation area reclamation" to be consistent with language adopted under § 444.950 RSMo 1986 concerning the bonding and reclamation of coal preparation areas. OSMRE does not have parallel definitions of these terms. The definitions adopted by Missouri are consistent with related terms defined at 30 CFR 701.5 concerning coal preparation and disturbed areas and add greater detail for determining the area to be bonded and reclaimed specifically related to coal preparation.

The Director finds that the amendment at § 444.805 RSMo 1986 is not inconsistent with SMCRA and the Federal regulations.

9. 10 CSR 40–6.010(6)(A): Permit Fee

Missouri amends 10 CSR 40–6.010(6)(A) to increase the fee charged for new surface coal mine permits from $35 per acre to $100 per acre. 30 CFR 777.17 requires each application for a surface coal mining and reclamation permit to be accompanied by a fee as determined by the regulatory authority. Such fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. Missouri has provided documentation in a July 25, 1988, letter to OSMRE (Administrative Record No. MO–390) that the change in fees will not generate revenues in excess of the cost of reviewing, administering, and enforcing the permit.

The amended permit fee fulfills the requirements of the Federal regulations at 30 CFR 777.17; therefore, the Director finds the amendment of 10 CSR 40–6.010(6)(A) to be no less stringent that SMCRA and no less effective than the Federal regulations.

10. 10 CSR 40–3.050(1)(E) and 10 CSR 40–3.210(1)(E): Use of Explosives

Missouri amends 10 CSR 40–3.050(1)(E) and 10 CSR 40–3.210(1)(E), concerning blasting buffer zones, by deleting them. The proposed amendment will eliminate these zones and rely on the performance standards of 10 CSR 40–3.050(5) to restrict the effect of explosives for the protection of the public and property. The Federal regulations at 30 CFR 816.61 through 816.68 and 817.61 through 817.68 do not establish blasting buffer zones and also rely on the same performance standards for the protection of property and the public.

The deletion of the blasting buffer zone makes the Missouri regulations the same as the Federal regulations; therefore, the Director finds that the amendment to 10 CSR 40–3.050(1)(E) and 10 CSR 40–3.210(1)(E) to be no less stringent than SMCRA and no less effective than the Federal regulations.

11. Section 444.730: Program Funding

Missouri amends its statutes by deleting subsection 4 of Section 444.730 RSMo 1986 thereby removing the State prohibition on appropriating or expending general revenue for the administration or enforcement of the Missouri program. Section 503(a) of SMCRA and 30 CFR 732.15(d) require that a State demonstrate that it has the ability to carry out the requirements of SMCRA "* * * with sufficient funding to enable the State to regulate surface coal mining and reclamation operations * * *" The proposed amendment will neither increase or decrease State funding, it will only allow the program one more potential source of funds.

The Director finds that the amendment at section 444.730 RSMo 1986 is not inconsistent with the requirements of SMCRA and the Federal regulations.

12. Section 444.800: State Law Stringency

Missouri amends its statutes at subsection 4 of section 444.800 RSMo 1986 to direct the Land Reclamation Commission in its adoption of rules and regulations to insure that such rules and regulations shall be no more stringent than the comparable Federal regulations, unless it can be affirmatively shown that the greater

stringency is essential to the proper administration and enforcement of this law. The Federal regulations at 30 CFR 730.11 require that State laws and regulations be "in accordance with" or "consistent with" the Federal law and regulations. The Federal regulations at 30 CFR 700.3(c) also allow for a State's law or regulations to provide more stringent regulations or controls than those provided by SMCRA. The proposed amendment will not allow the State to reduce the effectiveness of its program below the limits of SMCRA, but will allow the State to exceed the limits of SMCRA, if the appropriate conditions are met.

The Director finds that the amendment at section 444.800 RSMo 1986 is not inconsistent with SMCRA and the Federal regulations.

IV. Public and Agency Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No public comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), comments were also solicited from various Federal agencies with an actual or potential interest in the Missouri program. The U.S. Environmental Protection Agency (EPA) concurred that the amendments to the Missouri program demonstrate the legal authority, administrative capability, and technical conformity to SMCRA regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). None of the other agencies notified offered any comment.

In accordance with 30 CFR 732.17(h)(4), comments were also solicited from the State Historic Preservation Officer and the Advisory Council on Historic Preservation; however, no substantive comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Missouri on December 14 and 18, 1987, with the exception of those provisions concerning regulations determined to be inconsistent with SMCRA, the Federal regulations, or court decisions. To the extent required by 30 CFR 732.17(11)(ii), the EPA has concurred in this approval (Administrative Record No. MO–370).

The Federal regulations at 30 CFR Part 925 codifying decisions concerning the Missouri program are amended to implement this decision. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSMRE's review and approval with the exception of typographical errors. The final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is disapproving the following provisions of the proposed amendments: (1) As discussed in the finding 1a, the exemption from prime farmland performance standards of coal preparation plants, support facilities, and roads associated with surface coal mining activities in 10 CSR 40–4.030(4)(A); (2) as discussed in finding 1b, the exemption of water bodies from prime farmland performance standards where the original land use was prime farmland in 10 CSR 40–4.030(4)(B); and (3) as discussed in finding 2, the definitions of "coal processing plant" and "coal preparation plant" insofar as they exclude certain facilities that physically process coal in 10 CSR 40–8.010(1)(A)18.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Missouri program, the Director will recognize only statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

1. *National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action,OSMRE is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 21, 1988.

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 925—MISSOURI

1. The authority citation for Part 925 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.12 is added to read as follows:

§ 925.12 State program provisions and amendments disapproved.

The following provisions of the Missouri surface coal mining regulations as submitted on December 14 and 18, 1987, are hereby disapproved:

(a) 10 CSR 40–4.030(4)(A) insofar as it would exempt from prime farmland performance standards coal preparation plants, support facilities, and roads associated with surface coal mining activities.

(b) 10 CSR 40–4.030(4)(B) insofar as it would exempt from prime farmland performance standards water bodies as a postmining land use.

(c) 10 CSR 40–8.010(1)(A)18 the definitions of "coal processing plant" and "coal preparation plant" insofar as they exempt from regulation certain facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, if they do not separate coal from its impurities.

3. Section 925.15 paragraph (g) is added to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendments as submitted to OSMRE on December 14 and 18, 1987, are approved effective October 31, 1988.

(1) Revisions to the Missouri Code of State Regulations at 10 CSR 40–4.030(4)(C), (5), (6), and (7)(A), (B)(1), (2), (3), (4), (5), (7), and (8), Operations on Prime Farmland; 10 CSR 40–6.040(16), Prime Farmland Investigation; 10 CSR 40–6.060(4)(B), (C), and (D), Requirements for Permits on Prime Farmland; 10 CSR 40–6.110(16), Prime Farmland Investigation; 10 CSR 40–4.010, Coal Exploration Requirements; 10 CSR 40–6.020, General Requirements for Coal Exploration Permits; 10 CSR 40–8.050, Small Operator's Assistance; 10 CSR 40–8.070(2), Applicability and General Requirements; 10 CSR 8.030(3)(B), Availability of records; 10 CSR 40–7.021(4)(B), Inspection and Enforcement; 10 CSR 40–6.060(1)(E), (G), (J), and (K), Experimental Practices; 10 CSR 40–8.010(1)(A)5, 15, 16, 17, 19, 20, 25, 47, 48, and 92, Definitions; 10 CSR 40–2.090(6)(B), Revegetation Requirements; 10 CSR 40–6.010(6)(A), Permit fees; and 10 CSR 40–3.050(1)(E) and 10 CSR 3.210(1)(E), Blasting buffer zone.

(2) Revisions of the Revised Statutes of Missouri at sections 444.730, 444.800, 444.805 and 444.950 related to mining.

4. Section 925.16 is amended by removing and reserving paragraph (j) and adding paragraph (m) to read as follows:

§ 925.16 Required program amendments.

* * * * *

(j) [Reserved]

* * * * *

(m) By November 15, 1988, amend its program at:

(1) 10 CSR 40–4.030(4)(A) to remove the exemption from prime farmland performance standards afforded to coal preparation plants, support facilities, and roads associated with surface mining activities to be no less effective than 30 CFR 823.11(a).

(2) 10 CSR 40–4.030(4)(B) to remove the exemption from prime farmland performance standards provided to water bodies as a postmining land use to be no less effective than 30 CFR 823.11(b).

(3) 10 CSR 40–4.030(7)(B)6 to add a requirement that the row crop with the greatest rooting depth be chosen as one of the reference crops to be no less effective than 30 CFR 823.15(b)(6).

(4) 10 CSR 40–8.010(1)(A)18 to revise its definitions of "coal processing plant" and "coal preparation plant" to include all facilities where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation, even if it is not separating coal from its impurities, to be no less effective than the definitions found at 30 CFR 701.5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–3333–8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Revision of Particulate Emission Standards for Certain 1987 and Later Model Year Light-Duty Diesel Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule that establishes the following particulate standards under the Clean Air Act for light-duty diesel trucks with a loaded vehicle weight of 3,751 pounds or above (LDDT2): 0.50 gram per mile for the 1987 model year; 0.45 gram per mile for the 1988 through 1990 model years; and 0.13 gram per mile for the 1991 and later model years. The 1987–90 model year standards are applicable at low altitudes only; the 1991 and later model year standard is an all-altitude standard. Particulate standards for light-duty diesel trucks with a loaded vehicle weight of 3,750 pounds or below (LDDT1) will remain unchanged. Particulate emissions averaging will not be available for LDDT2s for the 1987 through 1990 model years, although it will continue to be available for LDDT1s and diesel passenger vehicles. Beginning in 1991, particulate emissions averaging between different LDDT2 engine families within a manufacturer will be allowed.

Nonconformance penalties will also be available for the heavier portion of the 1991 and later model year LDDT2s which may fail to comply with the 0.13 gram per mile particulate emission standard. The actual rates for the NCP's made available are not included in this final rule. The rates will be established in a separate rulemaking proceeding.

The Agency is promulgating these regulations in response to a petition from General Motors Corporation that outlines a plan to develop control technology which could substantially reduce light-duty diesel truck particulate emissions from current control levels.

EFFECTIVE DATE: November 30, 1988.

ADDRESSES: Public Docket: Copies of materials relevant to this rulemaking proceeding are contained in Public Docket A–86–20 at the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460, and are available for review between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. David Robertson, Manufacturers Operations Division (EN–340–F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382–2525.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations previously promulgated under the Clean Air Act required that particulate emissions from light-duty diesel trucks (LDDTs) be reduced from 0.60 gram per mile (g/mi) to 0.26 g/mi beginning with the 1987 model year. 49 FR 3010 (January 24, 1984), *codified at* 40 CFR 86.087–9 (1986). However, EPA regulations permit manufacturers unable to meet the 0.26 g/mi standard to sell their LDDTs in excess of 6,000 pounds gross vehicle weight rating (GVWR) if they pay nonconformance penalties (NCPs). (The Clean Air Act does not make NCPs available for vehicles weighing less than 6,000 pounds GVWR.) EPA made NCPs available for the 0.26 g/mi standard upon finding that the new standard is significantly more difficult to meet than the 0.60 g/mi standard, requires substantial work to meet, and is likely to create a manufacturer which is a technological laggard. 50 FR 53454 (December 31, 1985).

General Motors Corporation (GM) has submitted to the Administrator a petition requesting that the 0.26 g/mi particulate standard be modified for those LDDTs with a loaded vehicle weight (LVW) of 3,751 pounds or

greater, otherwise known as LDDT2s.[1] (*See* Petition of December 19, 1986, Docket No. A–86–20, Document No. II–D–2, revising April 17, 1986 version.) GM believes that the 0.26 g/mi standard is not technologically feasible by model year 1987 for its 6.2 liter (6.2L) diesel engine family. According to confidential sales estimates submitted by manufacturers to EPA's Certification Division, the 6.2L engine family is the only full-size, large displacement engine family in the LDDT2 class to be sold in model years 1987 and 1988.[2] GM stated that the 6.2L LDDT could most likely comply with the 0.26 g/mi standard by the 1989 model year, largely through refinement of already existing technology, e.g., electronically controlled exhaust gas recirculation, catalytic converters, and electronically controlled fuel injection.

GM requested that for LDDT2s, the particulate standard be relaxed to 0.50 g/mi for 1987 and 0.45 g/mi for 1988 through 1990 an then tightened to 0.13 g/mi beginning with the 1991 model year. In effect, GM's proposal is to relax the standard for model years 1987 through 1990 to permit manufacturers to focus their efforts on development of advanced particulate control technology which would, in turn, allow compliance with a 0.13 g/mi particulate emission standard by 1991. In exchange for the near-term relaxation of the 0.26 g/mi standard, GM claimed that there would be a significant long-term environmental benefit from the development of more effective particulate control technology applicable not only to LDDT2s, but potentially to other diesel vehicle classes as well.

As part of its petition, GM set forth a proposed research and development plan on which it based its projection of the probable technological feasibility of a 0.13 g/mi standard by model year 1991. The plan pursues an advanced particulate control technology with a particulate trap-oxidizer system ("trap") as its primary objective. Traps filter particulate matter from diesel exhaust, then burn off the trapped matter. Application of traps to LDDT2s presents several technological issues, such as durability during the longer useful life of light-duty trucks, that in GM's opinion have yet to be resolved. GM's proposed plan targets these issues for resolution by 1991, even in the event GM discontinues production of its 6.2L LDDT. GM's petition also asked EPA to make NCPs available for the proposed 1991 standard.

The Agency has carefully considered GM's petition and the technology development program it has proposed. Specifically, the research and development plan outlined by GM suggests that a 0.13 g/mi standard is attainable by model year 1991. EPA believes that the 0.13 g/mi standard could create significant environmental benefits. The standard will likely halve particulate emissions from LDDT2s compared to the 0.26 g/mi standard previously in place for the same time frame. Although the plan outlined in GM's petition would relax the particulate standards for 4 model years, EPA analysis shows that GM's suggested schedule of standards could realize a net LDDT2 emissions reduction over the 1987 and later model year 0.26 g/mi standard as early as 1995, assuming a moderate increase in LDT sales, plus a moderate increase in diesel sales penetration of that LDT market. (*See* Particulate Emissions Projection of the GM 6.2L Diesel Engine, Docket No. A–86–20, Document No. IIA–B–1 hereinafter "No. IIA–B–1.") Given the health and environmental hazards associated with particulate matter (see section IV, *infra*), a net reduction in LDDT2 particulate emissions would clearly be beneficial.

A more significant potential benefit of GM's suggested technology forcing strategy is that it could reduce particulate emissions from classes of vehicles in addition to LDDT2s. LDDT2s meeting a 0.13 g/mi standard will be controlled to a level substantially below the concurrent standards for lighter LDDTs and diesel passenger vehicles. Even though LDDT2s do not emit a large proportion of total diesel motor vehicle particulate emissions, EPA believes that if particulate trap technology capable of meeting a 0.13 g/mi standard is developed for LDDT2s, it could be transferable to lighter vehicle classes. Further, LDDT2s trap technology might also be transferable to heavier vehicles, a possibility GM notes in its petition.

Considering GM's showing of the likely feasibility of a 0.13 g/mi standard, and EPA's analysis of the environmental benefits that the 0.13 g/mi standard would likely yield, EPA decided to propose the schedule of revised standards outlined in GM's petition in a Notice of Proposed Rulemaking (52 FR 20175, June 4, 1987). In this NPRM the Agency also proposed to make NCPs available for 1991 and subsequent model year LDDT2s subject to the 0.13 g/mi particulate standard. (*See* Section III.B., *infra*).

II. Statutory Authority

Some LDDT2s exceed 6,000 pounds GVWR, and thus qualify as heavy-duty vehicles (HDV) under section 202(b)(3)(C) of the Act, 42 U.S.C. 7521(b)(3)(C). Other LDDT2s, while exceeding 3,751 pounds LVW, do not exceed 6,000 pounds GVWR, and thus are not HDVs.

For LDDT2s which are also HDVs, section 202(a)(3)(A)(iii), 42 U.S.C. 7521(a)(3)(A)(iii), authorizes EPA to promulgate particulate emission standards.

For LDDT2s which are not HDVs, section 202(a)(1) of the Clean Air Act, 42 U.S.C. 7521(a)(1), provides that the Administrator shall "by regulation prescribe * * * standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles * * * which may reasonably be anticipated to endanger the public health or welfare * * *." Particulate matter may be regulated as a threat to the public health and welfare. *NRDC* v. *EPA*, 655 F.2d 318, 327 (DC Cir.), *cert. denied*, 454 U.S. 1017 (1981).

Section 202(a)(3)(A)(iv), 42 U.S.C. 7521(a)(3)(A)(iv), authorizes EPA to categorize heavy-duty vehicles and engines according to vehicle weight, horsepower, "or such other factors as may be appropriate." Section 202(a)(1) grants EPA broad discretion to define classes of vehicles for purposes of setting standards under that section.

Section 206(g) of the Act, 42 U.S.C. 7525(g), permits the Administrator to promulgate NCPs for nonconforming heavy-duty vehicles and engines which do not exceed an "upper limit" of emission nonconformity. Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentives for nonconforming manufacturers to achieve the emission standard; and
- Remove any competitive disadavantage to conforming manufacturers.

Finally, section 301(a) of the Act, 42 U.S.C. 7620(a), provides in part that "the Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

III. Discussion of Final Rule and Comments

This final rule adopts the NPRM provisions described above with one

[1] EPA previously distinguished between LDDT2s and the lighter LDDTs in setting NO_x emission standards. *See* 50 FR 10606, 10620 (March 15, 1985).

[2] Only two other manufacturers are selling LDDT2s for the 1987 model year. Both of their models have smaller engines than GM's and one is significantly lighter; thus they emit less particulates. Neither of these other two are selling LDDT2s for the 1988 model year.

exception: The NCP penalty rates that were presented for LDDT2s in the 6,001 to 8,500 GVWR category in the NPRM are not being incorporated into this final rule. The actual penalty rates that will be applicable for the NCPs made available under this rulemaking will be established in a separate rulemaking proceeding. This will allow the Agency to base NCP rates on more recent information than if the penalty rates were established herein.

During the time that was available for public comment on the NPRM, eight organizations provided written comments. Of these eight, five are vehicle or engine manufacturers, one is an industry trade association, one is an emission control manufacturer, and one is an environmental organization.

a. General Issues

Several comments were received that did not directly address provisions proposed in the NPRM. Cummins Engine Company (Cummins) comments concerned the impact this rulemaking might have on an Advance Notice of Proposed Rulemaking (ANPRM) that EPA published on September 8, 1986 (51 CFR Part 32032). The ANPRM addressed the possible reclassification of Class IIB vehicles (8,501 to 10,000 lbs. GVWR) as LDTs. Cummins suggested that the LDDT2s particulate emission standards promulgated in this rulemaking should not apply to Class IIB vehicles, if the EPA concludes that these vehicles should be reclassified as LDTs.

It is beyond the scope of this rulemaking to address the applicability of the revised particulate emission standards contained herein to vehicles that are not currently categorized as LDDT2s. The appropriate forum to address Cummins' particular concern is the rulemaking process that would consider the possible reclassification of the IIB vehicles as LDTs.

The Natural Resources Defense Council (NRDC) had several comments relating to commitments GM discussed in its petition of December 19, 1986, and EPA's responsibility in assuring that these commitments are met. NRDC also commented that semi-annual meetings should occur between GM and EPA to discuss the progress of the research in developing the technology needed to meet the 0.13 gram/mile exhaust particulate standard.

In the December 19, 1986 petition GM made several commitments and statements that have provided support for this final rule. GM committed to continue with the technology development program through the 1991 model year, to accept the feasibility of the 0.13 gram/mile exhaust particulate standard for the 1991 model year, and to provide EPA with information on the progress of the development program by scheduling annual program reviews. EPA intends to hold GM to these stated commitments. GM has already proceeded with its planned development program and has provided information regarding this program to EPA during an initial meeting between EPA and GM representatives. Similar reviews will occur annually, or more often as is warranted by the progression of the program.

In its comments, Converter Technology proposed that EPA, truck manufacturers, particulate control device manufacturers, and other interested groups commit to regular briefings about the progress and development of any new particulate control technology. EPA, as always, is willing to meet with any interested parties that may be able to provide relevant information on new emission control technologies.

b. The Standards

NRDC and Converter Technology both commented that, in their opinion, the previous 1987 LDDT2 particulate standard of 0.26 g/mi is technologically feasible. As mentioned earlier, GM stated in its petition that it does not believe the 0.26 g/mi particulate standard is feasible for GM's 6.2L LDDT in the 1987 or 1988 model years. Two other manufacturers certified LDDT2 vehicles as meeting the 0.26 g/mi standard in the 1987 model year, and one certified LDDT2 vehicles in the 1988 model year although this manufacturer does not plan to sell any 1988 model year vehicles in this vehicle class. The ability of these manufacturers to meet the 0.26 g/mi standard, however, does not necessarily establish that the standard is technologically feasible for all LDDT2s. These other manufacturers had LDDT2 vehicles with significantly smaller engine displacements than the GM 6.2L engine, and one of the vehicles was substantially lighter; thus they emit less particulate emissions.

By temporarily relaxing the 0.26 g/mi standard, EPA believes that manufacturers will be able to concentrate their resources on developing substantially improved control technologies to meet a significantly lower particulate standard in the 1991 model year. The 0.13 g/mi particulate standard established in this final rule for the 1991 model year reduces the emissions level to half of what would have been allowed by the previous standard in that same model year. Even though the interim standards (1987 to 1990) are relaxed, they are still lower than the 1986 model year LDDT2 particulate emission standard. EPA projections indicate that cumulative LDDT2 particulate emissions resulting from these changes in the particulate emission standard will reach a break-even point in the mid-to late 1990s. In addition, EPA continues to believe that technology developed to meet the more stringent 1991 model year LDDT2 particulate emission standard may be transferable to other diesel-powered classes. This could provide EPA with an opportunity to reduce the particulate emission standards for these other classes, providing an added long-term benefit for the environment.

Converter Technology suggested some alternative provisions for this final rule that were not in the NPRM. One suggestion was to allow the use of an emission banking scheme using debits and credits to apply to the emission standards from the 1987 to possibly the 1995 model year. Manufacturers would presumably start the period with a debit in their banking accounts. If, at the end of the allowable period, manufacturers did not balance their accounts they would be required to pay NCPs on the difference. The Agency has decided to make NCPs available for manufacturers that may have trouble developing the required technology by the 1991 model year. However, EPA is presently considering the use of "banking and trading" in a separate rulemaking. *See* 51 FR 31959 (September 8, 1986).

A second suggestion was to not collect the NCPs in the 1991 or possibly even the 1992 model year if none of the manufacturers in the LDDT2 category had developed the technology required to comply with the particulate matter emission standard. Converter Technology also suggested that the implementation of the 0.13 g/mi emission standard should be dependent on the demonstration of a workable particulate control technology, and that if a manufacturer develops the technology prior to the 1991 model year, the technology should be incorporated into production vehicles at that time. EPA views the 1991 model year standard promulgated in this final rule as "technology-forcing." Section 202(a)(3)(A)(iii) of the Clean Air Act authorizes EPA to set "technology-forcing" particulate emission standards to provide manufacturers with the incentive to develop needed technology. Standards based on manufacturer's progress, by contrast, would not provide any incentive to further technology, especially in a category such as the LDDT2 that has very few manufacturers producing vehicles. The manufacturers,

of course, can incorporate the new technology into their vehicles at any time prior to the 1991 model year and the Agency would be pleased to see manufacturers do so.

Comments received from the Toyota Technical Center, USA, Inc. (Toyota) suggested that the 0.13 g/mi exhaust particulate standard may not be technologically feasible by the 1991 model year. Converter Technology also made this point. EPA believes that the standard is technologically feasible by 1991, based largely on the research and development plan set forth by GM, the major producer of vehicles in the LDDT2 category, in its petition to the Agency. EPA is not required to establish emission standards that every manufacturer can readily meet. The possibility that there may be technological laggards is the basis for NCPs being made available for the 0.13 g/mi exhaust particulate standard.

The standards for the 1987–90 model years are tighter than the 1986 model year standard of 0.60 g/mi and may require additional control measures, yet they will permit manufacturers to focus their attention and resources on development of a particulate trap-oxidizer system, instead of a system which refines existing technology. EPA has estimated that the 1991 standard of 0.13 g/mi is approximately equivalent in stringency to the particulate standard of 0.10 gram per brake horsepower-hour (g/BHP-hr) applicable to 1991 model year heavy-duty diesel bus engines and all 1994 and later model year heavy-duty engines (HDEs) to be installed in vehicles exceeding 8500 pounds GVWR. Thus, the 0.13 g/mi particulate standard will most likely require the development and installation of traps, because EPA has already found that the 0.10 g/BHP-hr standard will most likely require use of a trap-oxidizer system. *See* 50 FR 10606 (March 15, 1985).

EPA arrived at the 0.13 g/mi particulate standard for LDDT2s using the same methodology it employed for the 0.10 g/BHP-hr particulate standard for HDEs. That methodology considers such factors as trap efficiency, engine-out levels, deterioration rate for engine-out emissions, the availability of averaging for emission from different families, and compliance margin.

In their comments the Manufacturers of Emission Controls Associated (MECA) indicates they do not feel that relaxation of the interim standards from the previously established 0.26 g/mi standard is a good precedent for the Agency to establish. Converter Technology felt that EPA might unwittingly be stifling technological development by relaxing the interim standards. On the contrary, EPA believes this action is appropriate because relaxation of the interim standards will allow manufacturers to concentrate their respective resources on developing improved technologies.

c. Test Procedures

Mercedes-Benz of North America, Inc. (Mercedes-Benz) had several comments relating to the use of the presently defined exhaust particulate emission measurement procedure and the calculation procedure used for determining the deterioration factor. Mercedes-Benz believes that the present exhaust particulate measurement techniques are insufficient to reliably determine low levels of particulate matter. In addition, Mercedes-Benz does not believe that the present procedure for determining the deterioration factor addresses problems associated with extremely low particulate emission levels or problems associated with deterioration that might be non-linear. Mercedes-Benz did not provide information in its comments to support its concerns.

Discussions concerning the applicability of the present exhaust particulate measurement techniques and the deterioration factor have occurred in the past. Mercedes-Benz correctly notes an EPA workshop in July 1985, and a California Air Resources Board (CARB) workshop in July 1986, as two occasions on which these topics were discussed. Previous discussions have included concerns related to the minimum detectable limit of the present procedure and the accuracy and precision of the present test procedure at very low levels of particulate emissions. EPA intends to assess the present procedure for emission levels expected from vehicles meeting the 0.13 g/mi standard. Some refinements to the test procedure, such as increasing the flow through the sample filters, may be incorporated. EPA maintains ongoing programs to evaluate and update the test procedures, and is always willing to consider ideas and information helpful to refining the procedures.

d. Other Vehicle Classes

In the NPRM the Agency discussed the possibility that once the technology to meet the 0.13 g/mi standard was developed it could be applied to other vehicle categories and the emission standards tightened. EPA received several comments on its discussion. The Manufacturers of Emission Controls Association (MECA) commented that EPA should not delay lowering exhaust particulate standards for other light-duty truck and vehicle classes. NRDC stated that exhaust particulate standards for other diesel applications should be tightened when the trap technology has been successfully demonstrated. Converter Technology stated that the technology developed for the LDDT2 category will be readily transferable across vehicle classes. Mercedes-Benz did not agree that the technology developed to meet the 1991 MY LDDT2 particulate emission standard would be readily transferrable to other vehicle classes.

EPA continues to believe that the technology developed to meet the 1991 model year particulate emission standard promulgated in this final rule may be transferable to other categories of diesel-powered vehicles, since the size, weight, and use of other light-duty vehicles is not substantially different from the LDDT2 category. However, the specific application of this technology to other vehicle classes is beyond the scope of this final rule. When the technology has been developed EPA will evaluate the applicability of the technology to other diesel-powered classes.

Converter Technology apparently was under the impression that the NPRM specifically proposed a reduction of the light-duty diesel vehicle (LDDV) particulate standard to 0.10 g/mi. Neither the NPRM nor this final rule affect the particulate matter emission standards applicable to LDDVs.

e. Averaging

In this final rule EPA is allowing particulate averaging between different engine families of LDDT2s, beginning with the 1991 model year. It does not permit particulate averaging between LDDT2s and other classes of vehicles, such as LDDT1s and diesel passenger vehicles. (The previous 1987 model year standard did permit such inter-class averaging.) Under some scenarios, inter-class averaging would permit manufacturers to avoid development of the trap technology for LDDT2s, while avoidance is unlikely if averaging is permitted only within the LDDT2 class. However, inter-class averaging will remain available between LDDT1s and diesel passenger vehicles. This approach to averaging allows manufacturers considerable flexibility in meeting the particulate standards while insuring that the air quality goals made possible by the development of trap technology will not be compromised.

NRDC expressed substantial concern regarding the provision that allows particulate averaging. MECA stated that it is inappropriate to allow averaging for the 1991 and later model years.

However, the allowance of averaging was a basic premise in EPA's development and evaluation of the reasonableness of the 0.13 g/mi standard. Specifically, EPA arrived at the 0.13 g/mi particulate standard assuming that 90 percent of the vehicles would use the trap technology. This assumption was appropriate since EPA's goal was to arrive at a standard equivalent to the 0.10 g/BHP hour HDE standards for which EPA had also assumed that 90 percent of vehicles would use traps. If EPA had assumed that averaging would not be made available for this particulate standard, EPA would have arrived at a somewhat higher emission standard than that being promulgated. Even with the use of averaging, manufacturers are still required to meet a substantially reduced particulate emission level beginning in the 1991 model year that significantly reduces particulate matter emissions from the LDDT2 vehicle class.

f. Nonconformance Penalty

Converter Technology argued that NCPs should not be made available because it may provide manufacturers with a more attractive alternative than developing and incorporating the required technology for production. It believes that the penalty formula is not adequate to provide enough incentive for manufacturers to finance new technology. As required by section 206(g)(3) of the Clean Air Act, 42 U.S.C. 7525(g), EPA designed NCPs to remove any competitive disadvantage to conforming manufacturers. The Agency established the NCP penalty formula in a prior rulemaking (50 FR 53454) and adheres to this formula for the reasons described below. The actual values for the penalties will be established in a separate rulemaking.

1. Availability

Because of the 0.13 g/mi particulate standard for 1991 and later model year LDDT2s is technology-forcing, EPA is making NCPs available for vehicles in the 6,001 to 8,500 pound GVWR category that fail to comply with the 1991 model year particulate emission standard.

EPA promulgated regulations governing the availability of NCPs in two parts. The Phase I NCP rulemaking (50 FR 35374, August 30, 1985) established generic criteria for determining the emission standards for which NCPs will be offered, generic criteria for establishing an upper limit (an emission level above which heavy-duty vehicles or engines cannot be certified or introduced into commerce), and the penalty rate formula for determining the NCP payment. The Phase II NCP rulemaking (50 FR 53454, December 31, 1985) established specific emission standards for which NCPs were made available, the upper limits for those standards, and numerical values for the variables in the penalty rate formula for particular subclasses of engines and trucks. Among those standards for which NCPs were made available is the 1987 0.26 g/mi particulate standard applicable to LDDTs which are also heavy-duty vehicles (HDVs), i.e., those LDDTs having a GVWR between 6,001 and 8,500 pounds. Only the heavier portion of the LDDT2 class are also HDVs, because a vehicle which exceeds 3750 pounds LVW does not necessarily exceed 6000 pounds GVWR. *See* section II, above.

Because this final rule changes the 1987 and later model year particulate standard for LDDTs, NCP availability, upper limits and penalty rate values were reassessed for the 1987 and later heavy LDDT2s.

The Phase I NCP rulemaking established three "generic" criteria for determining the emission standards for which NCPs will be offered: the emission standard in question must become significantly more difficult to meet; substantial work must be required for compliance with the standard; and EPA must determine that a technological laggard is likely to develop. A technological laggard is a manufacturer which cannot meet the particular emission standard due to technological (not economic) difficulties and which consequently might be forced out of the marketplace.

This rulemaking relaxes the LDDT particulate standards now applicable to 1987 through 1990 MY LDDT2s. Thus, the regulations making available NCPs for the 0.26 g/mi standard are rescinded. The interim standards are not significantly more difficult to meet than the 1986 standard of 0.60 g/mi, substantial work to meet them is not required, and no technological laggard is likely. GM, in its amended petition, has indicated to EPA that its 6.2L engine family can meet these standards using technology currently available for production LDDTs, and EPA believes the same would be true for any other heavy LDDT2s in the market. Thus, NCPs are not available for the 1987 to 1990 model years LDDT2s.

This rulemaking establishes a 1991 and later model year LDDT2 particulate standard of 0.13 g/mi. This standard is significantly more difficult to meet than the previous 1987 and later model year standard of 0.26 g/mi, for which NCPs had been made available. It requires advanced technology that is not yet perfected, and thus, a technological laggard may well develop. Accordingly, EPA believes it is appropriate to offer an NCP for the 1991 and later model year 0.13 g/mi particulate standard for heavy LDDT2s. However, NCPs are not available for LDDT2s which are not also HDVs (i.e., NCPs are not available for vehicles with 6,000 lbs. or less GVWR).

As noted above, an upper limit is an emission level above which HDVs or HDEs cannot be certified or introduced into commerce, despite the availability of NCPs. Where there is a previously applicable emission standard, that standard serves as the upper limit.

In the case of the 1991 and later model year LDDT2 particulate standard of 0.13 g/mi, the revised 1990 LDDT2 particulate standard of 0.45 g/mi is the previous applicable emission standard, and thus, is the 1991 upper limit.

2. Penalty Rates for 1991 LDDT2 Particulate Standard

EPA has not established penalty rates or NCP cost data for this rule. The cost values for "heavy" LDDT2s subject to the 1991 and subsequent model year LDDT2 particulate standard of 0.13 g/mi will be proposed and established in a subsequent and separate rulemaking. This will allow the Agency to collect and analyze more recent information.

IV. Impacts of the Final Rule

A. Environmental Impact

EPA analysis shows that establishment of a 0.13 g/mi standard beginning in 1991 should create important environmental benefits by causing a long-term net decrease in diesel particulate emissions and thus reducing the hazards associated with diesel particulate matter.

In the short run, the impact of the temporary relaxation of the particulate standards applicable to LDDT2s will be insignificant because of the small number of vehicles in this market. By far the greater proportion of LDTs are gasoline-fueled. Diesels currently compose only 6 percent of the LDT fleet. The small short-term negative effect will in time be reduced by the implementation of the more stringent particulate emissions standards beginning in the 1991 model year. EPA estimates that cumulative LDDT2 particulate emissions resulting from relaxing, then later tightening, the standard will reach the "break-even" point in the mid-to late 1990s. The "break-even" point is the point at which the cumulative emissions average, under the amended standards, results in the

emissions level that would have been expected to occur had the standard remained 0.26 g/mi throughout. EPA expects net reductions to occur once the "break-even" point is surpassed, with the magnitude of the reduction depending on the amount of diesel sales penetration of the LDT market. (*See* No. IIA–B–1.) This scenario assumes moderate growth in all LDT sales. As mentioned previously, this emission benefit may be greater if the particulate trap technology developed for LDDT2s is transferable to lighter vehicle classes, and EPA sets more stringent standards for those classes. If all LDDT2s comply with the 0.13 g/mi standard beginning in 1991, it will create a net particulate emissions reduction of as much as 24,746 tons by the year 2000, a reduction of more than 25 percent compared to the base case of a 0.26 g/mi standard for all LDDT2s starting in 1987. (*See,* No. IIA–B–1.)

B. Economic Impact

To determine the economic impact of the 0.13 g/mi particulate standard, EPA looks to a preliminary analysis performed for estimating the NCP associated with the 0.13 g/mi particulate standard for 1991 and later model year heavy LDDT2s. This analysis shows that the cost to manufacturers and owners of achieving compliance with the 0.13 g/mi particulate standard, is about $487 per vehicle. In its petition, GM has estimated that it will spend $50 million on engineering to develop an emissions control system to bring its 6.2L engine family LDDT2s into compliance with the 0.13 g/mi particulate standard by 1991. EPA estimates the average cost to manufacturers to be $10 million per year.

The fact that GM proposed the 0.13 g/mi strategy raises a strong presumption that the resulting net reduction in particulate emissions will not be purchased at an unreasonable cost. Confidential business information on file with EPA's Certification Division shows that the GM 6.2L vehicles composed the bulk of the LDDT2 market for 1986 and 1987 and are the only vehicles being sold in the LDDT2 category for the 1988 model year. As far as the Agency is aware, GM may be the only manufacturer who will be significantly affected by the change to the 0.13 g/mi standard in 1991. The Agency received no comments addressing the economic impact of this rulemaking on any other motor vehicle manufacturers, owners, or other interested parties.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major," and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it will have an economic impact of less than $100 million per year, and will not have significant adverse effects on competition, productivity, investment, employment or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket cited at the beginning of this preamble.

Effect on Small Entities

Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. I certify that this regulation does not have impact on a substantial number of small entities. Few, if any, small entities market LDDT2s.

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air Pollution Control, Gasoline, Motor Vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority: Sections 202, 203, 207, 208, 215, and 301(b) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a).

Dated: October 21, 1988.

John A. Moore,

Acting Administrator.

TABLE OF CHANGES

Section	Change	Reason
1. Part 86, authority	Add cites	Clarification.
2. section 86.087–2	Add paragraph to define "Composite particulate standard."	Do.
	Add paragraph to define "Production weighted average".	
3. Section 86.087–9:		
(a)(1)(iv)	Amend paragraph to reflect change in standard for LDDT2; revise averaging of vehicle emissions.	This is a new requirement.
(d)(1)(iv)	Amend paragraph to denote LDDT1 only	Remove LDDT2 high-altitude particulate standard.
4. Section 86.088–9:		
(a)(1)(iv)	Amend paragraph to reflect change in standard for LDDT2; revise averaging of vehicle emissions.	This is a new requirement.
(d)(1)(iv)	Amend paragraph to denote LDDT1 only	Remove LDDT2 high-altitude particulate standard.
5. Section 86.091–9	Add language to define 1991 model year LDT emission standards; define averaging of vehicle emissions.	Incorporate a new requirement of LDDT2 particulate emissions at all altitudes.
6. 85.1105–87:		
(a)	Removed and Reserved.	Remove requirement.
(c)	Allow NCP for 1991 LDDT2 particulate standard for Heavy-Duty Engines.	New requirement.

For the reasons set forth in the preamble, Part 86, Subparts A and L, Chapter I of Title 40, Code of Federal Regulations, is amended as follows:

PART 86—[AMENDED]

1. The authority citation for Part 86 is revised to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7601(a).

2. A new § 86.087–2 of Subpart A is added to read as follows:

§ 86.087–2 Definitions.

"Composite particulate standard" for a manufacturer which elects to average diesel light-duty vehicles and diesel light-duty trucks with a loaded vehicle weight equal to or less than 3,750 lbs (LDDT1s) together in the particulate averaging program, means that standard calculated according to the following equation and rounded to the nearest hundredth gram per mile:

$$\frac{(PROD_{LDV})(STD_{LDV})+(PROD_{LDDT1})(STD_{LDDT1})}{(PROD_{LDV})+(PROD_{LDDT1})} = \text{Manufacturer composite particulate standard}$$

Where:

$PROD_{LDV}$ represents the manufacturer's total light-duty vehicle production for those engine families being included in the average for a given model year.

STD_{LDV} represents the light-duty vehicle particulate standard.

$PROD_{LDDT1}$ represents the manufacturer's total diesel light-duty truck production for those engine families with a loaded vehicle weight equal to or less than 3,750 lbs which are being included in the average for a given model year.

STD_{LDDT1} represents the light-duty truck particulate standard for diesel light-duty trucks with a loaded vehicle weight equal to or less than 3,750 lbs.

"Production-weighted average" means the manufacturer's production-weighted average particulate emission level, for certification purposes, of all of its diesel engine families included in the particulate averaging program. It is calculated at the end of the model year by multiplying each family particulate emission limit by its respective production, summing these terms, and dividing the sum by the total production of the affected families. Those vehicles produced for sale in California or at high altitude shall each be averaged separately from those produced for sale in any other area. Diesel light-duty trucks with a loaded vehicle weight equal to or greater than 3,751 lbs (LDDT2s) shall only be averaged with other diesel light-duty trucks with a loaded vehicle weight equal to or greater than 3,751 lbs produced by that manufacturer.

3. Section 86.087–9 of Subpart A, is amended by revising paragraph (a)(1)(iv) and adding paragraph (d)(1)(iv), to read as follows:

§ 86.087–9 Emission standards for 1987 and later model year light-duty trucks.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.50 grams per vehicle mile (0.31 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families subject to the standard of paragraph (a)(1)(iv)(A) of this section in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085–2.

* * * * *

(d)(1) * * *

(iv) *Particulate emissions* (diesels only). For light-duty trucks up to and including 3,750 lbs. loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

4. Section 86.088–9 of Subpart A, is amended by revising paragraphs (a)(1)(iv) and (d)(1)(iv), to read as follows:

§ 86.088–9 Emission standards for 1988 and later model year light-duty trucks.

(a)(1) * * *

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.45 grams per vehicle mile (0.28 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families subject to the standard of paragraph (a)(1)(iv)(A) of this section in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085–2.

* * * * *

(d)(1) * * *

(iv) *Particulate emissions* (diesels only). For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 gram per vehicle kilometer).

5. A new § 86.091–9 is to be added, to read as follows:

§ 86.091–9 Emission standards for 1991 and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust emissions from 1991 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.8 grams per vehicle mile (0.5 grams per vehicle kilometer).

(ii) *Carbon monoxide.* (A) 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the NO_x averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Diesel and gasoline-fueled engine families may not be averaged together. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3,750 lbs loaded vehicle weight included in the average and is calculated as defined in § 86.085–2.

(iv) *Particulate emissions* (diesels only). (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.13 grams per vehicle mile (0.03 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the particulate averaging program, provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas, and that light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section may be averaged only with other light-duty trucks subject to the standard of paragraph (a)(1)(iv)((B) of this section. If the manufacturer elects to average together particulate emissions of light-duty trucks subject to the standard of paragraph (a)(1)(iv)(A) of this section with the particulate emissions of diesel light-duty vehicles, its composite particulate standard applies to the combined fleets of those light-duty trucks and diesel light-duty vehicles included in the average and is calculated as defined in § 86.085–2.

(2) The standards set forth in paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Fuel evaporative emissions from 1991 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1991 and later model year light-duty truck.

(d)(1) Model year 1991 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i) *Hydrocarbons.* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer).

(ii) *Carbon monoxide.* (A) 14 grams per vehicle mile (8.7 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(iv) *Particulate emissions* (diesels only).

(A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 0.26 grams per vehicle mile (0.16 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 0.13 grams per vehicle mile (0.08 grams per vehicle kilometer).

(2) The standards set forth in paragraphs (d)(1)(i), (d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (d)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(e)(1) Fuel evaporative emissions from 1991 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.6 grams per test when tested under high altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1991 and later model year light-duty trucks sold for principal use at a designated high-altitude location.

(g)(1) Any light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high-altitude emission standards (specified in paragraphs (d) through (f) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (g)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities, and

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt 1985 and later model year vehicles from compliance with the high-altitude emission standards set forth in paragraphs (d) and (e) of this section if the vehicles are not intended for sale at high altitude and if the following requirements are met. A vehicle configuration shall only be considered eligible for exemption if the requirements of either paragraph (g)(2)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$ where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$ where the constant, C, is the same as that found in paragraph (g)(2)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (g)(2)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (g)(2)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (g)(2)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicles configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (g)(2)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (g)(2)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (g)(2)(iii) of this section.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

Subpart L—[Amended]

6. Section 86.1105–87 of Subpart L is amended by removing and reserving paragraph (a), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

(a) [Reserved]

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following emission standards: (1) Diesel light-duty truck (rated in excess of 6,000 pounds GVWR) particulate emission standard of 0.13 grams per vehicle mile.

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[FR Doc. 88–24963 Filed 10–28–88; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Parts 261 and 302

[FRL–3469–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to remove iron dextran (ferric dextran) (CAS No. 9004–66–4) from § 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove iron dextran from Appendix VIII of Part 261, the list of RCRA hazardous constituents. EPA also is removing iron dextran from the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is taking this action because iron dextran, when improperly treated, stored, transported, disposed of, or otherwise managed, is not capable of posing a substantial present or potential hazard to human health or the environment.

DATE: This regulation becomes effective on October 31, 1988.

ADDRESSES: The Office of Solid Waste (OSW) docket is located in the sub-basement at 401 M Street, SW., Washington, DC 20460, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475–9327. Refer to "Docket number F–85–IDEP–FFFFF" when making appointments to review any background documents for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Denny Cruz, Office of Solid Waste (SW–332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4802.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1985, EPA proposed to amend its regulations under RCRA to remove iron dextran from 40 CFR 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove iron dextran from Appendix VIII of Part 261, the list of RCRA hazardous constituents (50 FR 46468). EPA also proposed to remove iron dextran from the CERCLA list of hazardous substances. This proposal responded to an August 9, 1983, petition submitted by Fisons Corporation pursuant to § 260.20 to delist iron dextran.

The Agency originally listed iron dextran in 40 CFR 261.33(f) (EPA Hazardous Waste No. U139) and Appendix VIII based upon the listing criteria in 40 CFR 261.11(a)(3)(i)–(xi) and the Agency's Carcinogen Assessment Group (CAG) assessment that iron dextran exhibited sufficient evidence of carcinogenicity. Iron dextran has been designated as a Class B2 carcinogen by CAG according to EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992) based upon sufficient evidence of carcinogenicity in animals, but inadequate data in humans. A further review of the evidence for the carcinogenicity dextran reveals that it is limited to studies in which iron dextran was given to experimental animals by subcutaneous or intramuscular injection;

in addition, there is no evidence that iron dextran is carcinogenic when orally or otherwise administered. Furthermore, the large size of the iron dextran complex (molecular weight approximately 180,000) [1] prevents its absorption by the oral, dermal, or inhalation routes. In fact, dextran, to which the iron is complexed, is a large polysaccharide (molecular weight 40,000—75,000) that is commonly used parenterally (nonintestinally) as a plasma expander. By definition, plasma expanders have an osmotic pressure comparable to plasma, preventing them from crossing membrane barriers, and thereby effectively prohibiting their absorption from the circulatory system.[2] Since they cannot cross membrane barriers, they cannot be absorbed by the oral, dermal, or inhalation routes. Iron dextran is much larger than dextran; thus, it too will not be absorbed. Therefore, EPA now concludes that iron dextran, when discarded, does not pose a significant hazard to human health or the environment because iron dextran, due to its size, stability, and osmotic pressure, is not absorbed by the oral, dermal, or inhalation routes, and exposure via subcutaneous or intramuscular injection at levels of concern is not a likely mismanagement scenario. Accordingly, iron dextran also does not meet the standard for listing a hazardous constituent on Appendix VIII of Part 261 set forth at § 261.11(a). That section provides for listing in Appendix VIII only if a constituent has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on human or other life forms. Applying this standard in the context of Subtitle C, that is, to protect human health and the environment from the risks of improper hazardous waste management, EPA concludes that the available scientific studies, which address carcinogenic effects of subcutaneous injection of iron dextran, when viewed in light of the lack of absorption of iron dextran via oral, dermal, and inhalation routes, do not demonstrate carcinogenic effects as a result of a plausible mismanagement scenario. Similarly, iron dextran also does not meet the standard for listing of a hazardous waste set forth at § 261.11(a)(3). Again, because iron dextran cannot be absorbed by the oral, dermal, or inhalation routes, it is not "capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed."

[1] Lundin, P.M. 1961. The carcinogenic action of complex iron preparations. *Brit. J. Cancer* 15:838.

[2] Goodman, L.S. and A. Gilman, eds. 1975. *The Pharmacological Basis of Therapeutics*, 5th ed. MacMillan Publishing Co., Inc. New York, NY.

II. Response to Comments

EPA received comments from the Natural Resources Defense Council (NRDC) in response to the proposed rulemaking. The NRDC presented the following arguments: (1) Sufficient evidence exists of carcinogenicity in experimental animals by the injection route indicating the potential to cause tumors by other routes of exposure including ingestion, (2) suggestive evidence exists in rodents that iron dextran can induce tumors at distal sites, and (3) there are case reports in the literature of injection site tumors in humans. These arguments are discussed below in more detail.

1. The commenter states that "the sufficient evidence of carcinogenicity in experimental animals by the injection route indicates the potential to cause tumors by other routes of exposure, including ingestion." The commenter states that iron dextran has not been adequately tested by other routes of administration and that in the absence of such data, "a prudent approach is to assume that iron dextran is potentially carcinogenic in humans by the oral or inhalation routes." In support of this, the commenter cites an analysis of the literature that found that of 102 chemicals reviewed, only 8.7% that were positive for carcinogenicity by a subcutaneous route were negative when tested by other routes.

The Agency agrees that other routes are potential pathways for carcinogenicity if one route has shown to be carcinogenic. However, iron dextran, because of its size, stability and osmotic pressure is unlikely to be absorbed by any route of exposure other than subcutaneous or intramuscular injection. Accordingly, it could not pose a significant hazard to human health or the environment through these other routes of exposure.

2. The commenter states "there is, in fact, some suggestive evidence in rodents that iron dextran can induce tumors at distal sites." The commenter cites, in support of this contention, one subcutaneous injection study in rats where distal tumors were elevated by 6.3% over a control incidence of 7.8% in one of four treatment groups.

The Agency has reviewed these data and does not deem this positive evidence. The increased incidence was not dose-related, it was only seen in one group, and was not statistically significant. We concluded, therefore, that the incidence of distal tumors found in this study does not provide positive evidence of carcinogenicity.

3. The commenter cites another study in mice that discussed the possibility that iron dextran may act as a co-carcinogenic factor in the case of lymphoreticular neoplasms, increasing host susceptibility to the oncogenic virus possibly present in both test and control animals.

The Agency does not believe that this study provides conclusive evidence of carcinogenic effects; rather the Agency regards such evidence as speculation. Therefore, this suggestive result is not a significant toxic effect.

4. The commenter claims "further evidence of iron dextran's carcinogenicity is provided by very recent experiments in which iron dextran was injected in mice implanted with L1210 cell line inoculates. In these experiments, the L1210 cell line acted as a potential tumor analogue. Iron dextran not only accelerated proliferation of the L1210 cells, but also significantly increased the lethality of these cells. This provided further evidence that iron overload is carcinogenic not only at the site of entry but systemically as well."

The Agency agrees that iron overload is correlated with carcinogenicity. The studies cited by the commenter presented evidence of a high incidence of lung cancer in hematite (iron ore) miners, hepatomas in gold miners due to the excessive oral ingestion of iron-contaminated beer, and gastric cancer in people with occupations exposed to iron dust, all associated with hemochromatosis, a disorder of iron metabolism. However, the EPA does not believe that the above-cited studies provide evidence of iron dextran-induced iron overload because iron dextran cannot be absorbed by any route other than subcutaneous, nor is there evidence that subcutaneous exposure will result in concentrations of iron dextran high enough to induce iron overload-associated cancer at distal sites.

5. The commenter states "there have been a number of case reports in the literature of tumors at the injection site in humans." Specifically, the commenter cites eight cases of sarcomas that have followed intramuscular injection of iron compounds.

The Agency believes that these studies are of questionable value. All of the studies involved tumors or lesions at the site of injection. The Agency promulgated a policy on September 24, 1986, on how to deal with tumors at the site of injection in the *Guidelines for Carcinogen Risk Assessment* (51 FR 33992). These guidelines state that

tumors at the site of injection alone are "limited" evidence of the carcinogenicity of a compound. Furthermore, three of the studies involved the injection of Jectofer, an iron sorbitol and citric acid complex, rather than iron dextran, and therefore any conclusion drawn from these studies about the carcinogenicity of iron dextran is questionable.

In summary, the Agency is issuing a final rule to remove iron dextran from the list of hazardous wastes on the grounds that, because of its size, it does not present a carcinogenic risk to humans by any route of exposure other than possible subcutaneous. Exposure via subcutaneous or intramuscular exposure at levels of concern, however, is not a plausible mismangement scenario. Multiple doses of milliliter quantities of iron dextran need to be injected into the system to possibly cause a detrimental effect. This is a highly unlikely mismanagement scenario. There are no other known reasons to list iron dextran.

Iron dextran is not absorbed by oral, dermal, or inhalation routes. It is a drug that is regulated by the Food and Drug Administration for non-intestinal use only. All of the animal and human data cited by the commenter as supportive evidence of systemic carcinogenicity have been reviewed by the Agency, and are regarded as being inadequate, inconclusive, or speculative.

III. Relationship to Other Regulatory Authorities

Whenever a hazardous waste or waste stream is listed under section 3001 of RCRA, it is co-listed as a hazardous substance under the statutory provisions of section 101(14) of CERCLA. The Agency, in its April 4, 1985, final rule on notification requirements and reportable quantity (RQ) adjustments, noted that iron dextran, along with numerous other elements, compounds, mixtures, solutions, and hazardous wastes, was designated as a hazardous substance under section 102(a) of CERCLA. (See 50 FR 13456.)

In addition to amending the RCRA regulations to remove iron dextran from 40 CFR 261.33(f) and 40 CFR Part 261, Appendix VIII, the Agency is today removing iron dextran from the CERCLA section 102(a) list of hazardous substances. As a result of the removal of iron dextran from the § 261.33(f) and Part 261 Appendix VIII lists, the Agency has no basis upon which to retain iron dextran on the CERCLA section 102(a) list of hazardous substances. The Agency's designation of iron dextran under section 102(a) was based solely upon its inclusion as a hazardous substance under section 101(14) of CERCLA. The Agency has previously stated that when hazardous substances are added to or removed from the lists which comprise the CERCLA section 101(14) list of hazardous substances, corresponding changes will be made simultaneously both to the list of hazardous substances in section 101(14) and the list of CERCLA hazardous substances designated under section 102(a) and published in 40 CFR Table 302.4. (See 48 FR 23552, 23554 (May 25, 1983 proposed rule); Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102 (Volume 1, March 1985) at ES–4.)

Although iron dextran is today being removed from the CERCLA § 102(a) list, wastes containing iron dextran may, in certain circumstances, be hazardous substances under section 102(a). Wastes containing iron dextran which exhibit any of the hazardous characteristics identified in 40 CFR 261.20 through 261.40, are CERCLA hazardous substances under section 101(14) and are designated as section 102(a) CERCLA hazardous substances. All unlisted hazardous substances have a reportable quantity of 100 pounds under 40 CFR 302.5(b).

IV. 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 sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (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 the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged 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 implement 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 applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule promulgates regulations that are not effective in authorized States since the regulations are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the regulations will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. 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. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations promulgated today at §§ 261.33(f) and 302.4 are considered to reduce the scope of the existing Federal regulations. Therefore, authorized States are not required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

V. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste

Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule is effective immediately.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an effect on the economy of $100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State or local government agencies, or geographic regions. Finally, there would be no adverse impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

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

This amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Moreover, relatively few small entities dispose of iron dextran. Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substance, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Date: October 21, 1988.

John A. Moore,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 and 6922).

§ 261.33 [Amended]

2. Amend the table in § 261.33(f) by removing the listing: "U139 . . . 900466–4 . . . Iron dextran."

Appendix VIII [Amended]

3. Amend Appendix VIII by removing the listing: "Iron dextran . . . Same . . . 9004–66–4."

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

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

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602, Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Amend § 302.4 by removing the entire entry for "iron dextran" and "ferric dextran" from Table 302.4 and its Appendix A.

[FR Doc. 88–25078 Filed 10–28–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 261 and 302

[FRL–3469–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide From the List of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to remove strontium sulfide (CAS No. 1314–96–1) from § 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove strontium sulfide from Appendix VIII of Part 261, the list of RCRA hazardous constituents. EPA also is removing strontium sulfide from the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is taking this action because strontium sulfide, when improperly treated, stored, transported, disposed of, or otherwise managed, does not pose a significant hazard to human health or the environment.

DATE: This regulation becomes effective on October 31, 1988.

ADDRESSES: The Office of Solid Waste (OSW) docket is located in the sub-basement at 401 M Street, SW., Washington, DC 20460, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475–9327. Refer to "Docket number F–83–SSPA–FFFFF" when making appointments to review any background documents to this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Denny Cruz, Office of Solid Waste (SW–332),

U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4802.

SUPPLEMENTARY INFORMATION:

I. Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921 (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602.

II. Background

On August 26, 1983, EPA proposed to amend its regulations under RCRA to remove strontium sulfide from 40 CFR 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove strontium sulfide from Appendix VIII of Part 261, the list of RCRA hazardous constituents (48 FR 39000). This proposal was in response to a February 5, 1981 petition submitted by Chemical Products Corporation, pursuant to § 260.20 to delist strontium sulfide.

The Agency originally listed strontium sulfide in 40 CFR 261.33(e) (EPA Hazardous Waste No. P107) and Appendix VIII based upon the listing criteria in 40 CFR 261.11(a)(2) and its oral (human) lowest lethal dose (LDL_o) of 50 mg/kg as listed in the *Registry of Toxic Effects of Chemical Substances (RTECS)* (National Institute for Occupational Safety and Health (NIOSH), 1978). A further look at the evidence for the toxicity of strontium sulfide reveals that the oral (human) LDL_o value of 50 mg/kg was actually reported in the original source, *The Clinical Toxicology of Commercial Products* (Gosselin *et al.*, 1976), as a range of 50 to 500 mg/kg for "Probable Oral Lethal Dose (Human)." The lowest value of this range (50 mg/kg) was subsequently reported by NIOSH in spite of a footnote in the original source which states that the toxicity for strontium sulfide was based upon "obviously inadequate data" and that it could "represent no more than guesses."

The more recent *RTECS* supplement (NIOSH, 1985) does not list the oral (human) LDL_o value for strontium sulfide because of the lack of reliable data on its toxicity.

The Agency has searched for current reliable data on the acute and chronic (specifically, teratogenic) toxicity of strontium sulfide in numerous toxicological sources through the Office of Research and Development and has found no additional data. In view of this lack of reliable information, the Agency believes that there is insufficient evidence to support the continued listing of strontium sulfide as either an acute hazardous waste or as a toxic waste.

It is important to note, however, that this action does not completely release wastes containing strontium sulfide from regulatory control under RCRA. The Agency believes that wastes containing high concentrations of strontium sulfide may exhibit the characteristic of reactivity (40 CFR 261.23(a)(5)) (*i.e.*, a sulfide-bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases (*e.g.*, H_2S), vapors, or fumes in a quantity sufficient to present a danger to human health or the environment). If the wastes exhibit the characteristic of reactivity, they must be handled as hazardous wastes.

III. Response to Comment

EPA received one comment which agreed with the Agency's proposal to delist strontium sulfide based on the most current data available.

The Agency therefore stands by its proposal to delist strontium sulfide on the basis that there is insufficient evidence to support its listing as either an acute hazardous waste or as a toxic waste.

IV. Relationship to Other Regulatory Authorities

Whenever a hazardous waste or waste stream is listed under section 3001 of RCRA, it is co-listed as a hazardous substance under the statutory provisions of section 101(14) of CERCLA. The Agency, in its April 4, 1985, final rule on notification requirements and reportable quantity (RQ) adjustments, noted that strontium sulfide, along with numerous other elements, compounds, mixtures, solutions, and hazardous wastes, was designated as a hazardous substance under section 102(a) of CERCLA. (See 50 FR 13456.)

In addition to amending the RCRA regulations to remove strontium sulfide from 40 CFR 261.3(e) and 40 CFR Part 261, Appendix VIII, the Agency is today removing strontium sulfide from the CERCLA section 102(a) list of hazardous substances. As a result of the removal of strontium sulfide from the § 261.33(e) and Part 261 Appendix VIII lists, the Agency has no basis upon which to retain strontium sulfide on the CERCLA section 102(a) list of hazardous substances. The Agency's designation of strontium sulfide under Section 102(a) was based solely upon its inclusion as a hazardous substance under section 101(14) of CERCLA. The Agency has previously stated that when hazardous substances are added to or removed from the lists which comprise the CERCLA section 101(14) list of hazardous substances, corresponding changes will be made simultaneously both to the list of hazardous substances in section 101(14) and the list of CERCLA hazardous substances designated under section 102(a) and published in 40 CFR Table 302.4. (See 48 FR 23552, 23554 (May 25, 1983 proposed rule); Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102. (Volume 1, March 1985) at ES–4.)

Although strontium sulfide is today being removed from the CERCLA section 102(a) list, wastes containing high concentrations of strontium sulfide may, in certain circumstances, be hazardous substances under section 102(a). As discussed above, the Agency believes that a waste containing high concentrations of strontium sulfide may exhibit the characteristic of reactivity such that it must be handled as a hazardous waste under 40 CFR 261.23. Unlisted RCRA hazardous wastes, or hazardous wastes exhibiting any of the characteristics identified in 40 CFR 261.20 through 61.40, are CERCLA hazardous substances under § 101(14) and are designated as section 102(a) CERCLA hazardous substances. (See 40 CFR 302.4(b).) Thus, if wastes containing strontium sulfide exhibit the characteristic of reactivity under 40 CFR 261.23, these wastes would also be CERCLA hazardous substances under section 102(a). All unlisted hazardous substances have a reportable quantity of 100 pounds under 40 CFR 302.5(b).

V. 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 sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (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 would not issue permits for

any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged 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 implement 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 applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule promulgates regulations that are not effective in authorized States because the regulations are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, the regulations will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. 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. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations promulgated today at § 261.33(e) are considered to reduce the scope of the existing Federal regulations. Therefore, authorized States are not required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

VI. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule is effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an annual effect on the economy of $100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State, or local government agencies, or geographic regions. Finally, there will be no adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VIII. Regulatory Flexibility Act

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

This amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Moreover, relatively few small entities disposed of strontium sulfide. Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paper Reduction Act

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

X. References

Gosselin, R.E. *et al.* 1976. *The Clinical Toxicology of Commercial Products.* The Williams and Wilkins Co. Baltimore, MD.

National Institute of Occupational Safety and Health. 1978. *Registry of Toxic Effects of Chemical Substances.* USDHHS. Cincinnati, OH.

National Institute of Occupational Safety and Health. 1985. *Registry of Toxic Effects of Chemical Substances: 1983–1984 Cumulative Supplement to the 1981–1982 Edition.* USDHHS. Cincinnati, OH.

List of Subjects

40 CFR Part 261

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substance, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Date: October 21, 1988.

John A. Moore,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6938.

§ 261.33 [Amended]

2. Amend the table in § 261.33(e) by removing the listing: "P107 * * * 1314–96–1 * * * Strontium sulfide."

Appendix VIII—[Amended]

3. Amend Appendix VIII by removing the listing: "Strontium sulfide * * * Same * * * 1314–96–1."

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

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

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Amend § 302.4 by removing the entry for "strontium sulfide" from Table 302.4 and its Appendix A.

[FR Doc. 88–25079 Filed 10–28–88; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the California Freshwater Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the California freshwater shrimp (*Syncaris pacifica*) to be an endangered species. The species is threatened by introduced predatory fish and deterioration or loss of habitat resulting from water diversion, impoundments, livestock grazing, agricultural activities and development, urbanization, and water pollution. The California freshwater shrimp is known from only twelve streams in Napa, Marin, and Sonoma Counties, California. This rule implements the protection provided under the Endangered Species Act of 1973, as amended, for the California freshwater shrimp.

EFFECTIVE DATE: November 30, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement Field Station, Division of Endangered Species, 2800 Cottage Way, Room E–1823, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the above address (916/978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

The California freshwater shrimp, *Syncaris pacifica* (Holmes), is a decapod crustacean of the family Atyidae. Samuel J. Holmes first described *S. pacifica* as *Miersia pacifica* in 1895. In 1900, Holmes erected a new genus, *Syncaris*, for the California atyids based on notable differences in the chelae (pinchers) and rostrum (horn-shaped structure between the eyes). *S. pacifica* can be distinguished from *Palaemonias*, the only other atyid genus in the United States, by its well-developed stalked eyes. *Palaemonias* are blind and dwell in caves in the eastern United States. *S. pacifica* is the only surviving species in the genus *Syncaris*.

Adults may reach 5 centimeters (cm) (2½ inches) in length. Nearly transparent in water, the adults appear out of water to be greenish-gray to almost black with pale blue uropods (tail fins). An adult female lays relatively few eggs (50–70, Hedgpeth 1975; 100–120, Eng 1981). While she carries the eggs on her body for 8 to 9 months, slow overwintering development of the eggs occurs. During this period, many larvae die due to adult female death and genetic or embryonic developmental problems. As a result, the number of embryos emerging from the eggs during May are reduced typically by 50 percent. During the first summer, larval growth is rapid, but sexual maturity is not reached until the second summer.

The California freshwater shrimp is endemic to gentle gradient (less than 1 percent), low elevation (below 115 meters (380 feet)), freshwater streams in Marin, Napa, and Sonoma Counties, California. The species, a true freshwater shrimp, inhabits quiet portions of tree-lined streams with underwater vegetation and exposed tree roots. Once common in the three counties, *S. pacifica* now occurs only within restricted portions of 12 streams. It cannot tolerate salt or brackish water and does not occur in the intertidal reaches or estuarine areas of any of the streams (Born 1968, Hedgpeth 1968, and Li 1981). The shrimp's transparency, secretive habits, and rapid escape behavior contribute to its obscurity and make it difficult to capture or detect by the casual observer. The California Department of Fish and Game (CDFG) attributed the decline in shrimp populations primarily to degradation and loss of its habitat resulting from increased urbanization, overgrazing, agricultural development, dam construction, and water pollution (CDFG 1980). Essentially compatible with native fish species, *S. pacifica* is threatened by the introduction of exotic predators, especially fishes of the sunfish family. Because of the species' low reproductive potential, slow maturity, restricted distribution, and specialized habitat requirements, *S. pacifica* is particularly vulnerable to habitat loss and predation by exotic species against which its natural defense mechanisms are ineffective.

On June 4, 1974, the Service entered into a contract with the Sierra Club Foundation to investigate the status of freshwater shrimps in Pacific drainages. A final report under this contract was submitted in September 1975 by Dr. Joel W. Hedgpeth. Dr. Hedgpeth concluded in his report that *Syncaris pacifica* had been extirpated in some streams and was reduced in distribution and abundance in others. This report cited dredging, streambed gravel stockpiling, stream diversion, and building temporary summer gravel dams on the Austin Creek system as the major factors responsible for the decline of the California freshwater shrimp. Larry Serpa (1985) reported the species inhabited eleven streams in the Russian River, San Francisco Bay, and other coastal drainages. These streams are East Austin, Salmon, Lagunitas, Big Austin, Sonoma, Huichica, Green Valley, Jonive, Walker, Yulupa, and Blucher. This survey included a total of 52 streams in the three drainages. Bill Cox of CDFG (personal communication 1986) found shrimp in the Napa River near Calistoga. This finding increases the total number of streams in the area known to contain shrimp to 12 out of the 53 surveyed.

The California freshwater shrimp was proposed as a threatened species on January 12, 1977 in the **Federal Register** (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796), under a provision of the 1978 amendments to the Endangered Species Act of 1973, which required withdrawal of all pending proposals if they were not finalized within 2 years of the proposal. On March 23, 1980, the Service received from CDFG a series of annotated maps delineating the known, current distribution of the California freshwater shrimp. These maps summarize the distribution data collected by CDFG in 1979 and 1980. Additional distributional

data were received by the Service from the CDFG on October 30, 1980. CDFG later sent to the Service detailed information on the distribution, life history, and status of the shrimp in 1981 (Eng 1981, Serpa 1985). These maps and additional data constitute significant new information on which to make a determination of endangered status for the California freshwater shrimp.

In the **Federal Register** of April 22, 1987 (52 FR 13254), the Service proposed the California freshwater shrimp as an endangered species. On June 8, 1987, a request for a public hearing on this proposal was received from S. Reid Gustafson, Vice President, Shea Homes, San Jose, California. On June 19, 1987, the Service extended the comment period, which originally closed June 22, 1987, to August 1, 1987, and gave notice of the public hearing (52 FR 23317). The Service held the public hearing on July 15, 1987. On July 31, 1987, the Service extended the comment period an additional 60 days to October 1, 1987 (52 FR 28680), to accommodate several requests.

Summary of Comments and Recommendations

In the April 22, 1987, proposed rule 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. A newspaper notice was published in the *San Francisco Chronicle/Examiner* (July 9, 1987), *Santa Rosa Democrat* (July 10, 1987), *Argus-Courier* (July 10, 1987), and the *Independent Journal* (July 10, 1987), all of which invited general public comment. A total of 49 written comments on the listing were received and 2 comments not pertaining to the listing. A total of 21 individuals attended the public hearing in Santa Rosa, California, on July 15, 1987, and 11 provided testimony. The two additional **Federal Register** notices extending the comment period and announcing the public hearing were also published in the aforementioned four newspapers in June and July, respectively.

During the comment period, totaling approximately 6 months, 49 comments on the listing were received. Of the 35 comments that were substantial and stated a position on listing, 18 (36.7 percent) supported the listing and 17 (34.7 percent) did not; 14 (38.6 percent) were nonsubstantive. These written comments and the nine statements presented at the public hearing are discussed below.

Multiple comments from the same individual or entity are combined and regarded as one response.

Support for the listing proposal was voiced by one State agency (California Department of Fish and Game), seven conservation organizations (or branches thereof), and 10 other interested parties.

Opposing comments and other comments questioning the rule can be placed in a number of general groups. These categories of comments, and the Service's response to each, are listed below.

Comment 1: Several questions were raised pertaining to the available biological information on the shrimp. Have enough surveys been done to determine that the shrimp does not occur in other streams in the area? What are its specific habitat requirements? Without complete information on the above topics, is this listing premature?

Service response: The Service finds that surveys since 1950 (testimony of Dr. Hedgpeth at the public hearing) and the recent surveys (Hedgpeth, 1968, 1975, Eng 1981, and Serpa 1986) of 53 streams in the area, including the historical locations of the shrimp, provide adequate information on the distribution, habitat requirements, and threats to the species to warrant the present action for the shrimp. Further studies on the distribution would consume additional time during which the shrimp would not be protected. Further, because of the strict habitat requirements of the species, the shrimp is not likely to occur in other areas. In the Background, and Factors Affecting the Species sections of this rule, the natural habitat and requirements of the shrimp are described. Pertinent studies on the habitat requirements of the shrimp are listed in the References Cited section of the proposed rule and the final rule. In some cases, the data were supplied by personal communications with field biologists and are so noted in the text.

Under § 424.11(b) of the regulations for listing endangered species (50 CFR Part 424), the Secretary shall make any determination solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. The State of California, recognizing the decline in the California freshwater shrimp, listed it as endangered in 1980. The species continues to lose habitat and decline in distribution and population size. Therefore, based on the available information regarding the status of the shrimp, the Service believes immediate listing is warranted.

Comment 2: What is the difference between the two types of summer dams used in the area? What are the effects of the summer gravel dams as well as gravel mining and removal on the shrimp and its habitat? It was suggested that dams such as those built by the Cazadero Dam Committee (a group of private citizens and property owners along the Austin Creek system) on the Austin Creek System in Sonoma County and the Giacomini Dam in Marin county have actually helped the shrimp. Commenters stated the need for dams in the area to provide water for drinking, fire protection, and recreation during the dry season.

Service response: Presently, there are two methods of temporary summer dam construction in those counties where shrimp are known to occur. One method and probably the more damaging to the shrimp, is the practice of using a bulldozer or other earth-moving equipment to create a dam by pushing gravel from the streambed over culverts placed in the live stream. Flash boards may be placed over the opening of the culvert to regulate the amount of water retained behind the structure. This method causes extensive siltation downstream during the initial construcion period and later when the dam is washed out during the heavy rainstorms in the fall. Siltation changes the substrate from gravel to fine silt. this silt suffocates the source of food for the shrimp such as other small invertebrates and encrusting organisms that live in the gravel substrate and on submerged rocks.

The other method of temporary summer dam construction in this area is done by placing permanent structures or abutments on opposite shores of the streams and using a crane to suspend a movable bridge onto these structures. This temporary bridge is put in place during the spring or early summer and removed in the fall. This type of dam has no adverse affect on the shrimp because the aquatic habitat is not altered.

The adverse effects of the summer gravel dams on the shrimp are summarized under section A of the Summary of Factors Affecting the Species in the final rule. Temporary dams constructed only of gravel destroy shrimp habitat in two ways. First, the dams are allowed to remain in the streams until the winter rains wash them out. This gravel is then carried downstream and deposited in the undercut banks adversely affecting the essential habitat for the shrimp. When streamflows are high during the winter

and spring, *Syncaris* are found under submerged undercut banks where fine roots extending into the water provide cover. In such a habitat, the shrimp are sheltered from the strong currents of winter flows. During the summer and fall when the streamflow is lower, the shrimp are associated with streamside vegetation that extends into the water and provides shade as well as appropriate hiding places. These essential areas are degraded as habitat for the shrimp when they are filled with sand and gravel. Second, when the dams are in place throughout the summer, a warm, long, narrow lake is created in what was once a cool stream environment. Because the feeding behavior and thermoregulatory adaptations of the shrimp are specific to survival in a cool, slow-moving water environment, they are not adapted to a warm, still water habitat and will eventually die if they cannot return to the cool stream environment. They do occur in deep cool pools in the stream. These dams also entrap a large number of aggressive, fast growing, exotic fish species which prey on the shrimp and other aquatic organisms.

There is no evidence that the temporary summer gravel dams, such as those constructed by the Cazadero Dam Committee, have helped the shrimp. The shrimp habitat of East Austin Creek has been degraded by the dams to the extent that the present population of shrimp is discontinuously distributed. The shrimp population cannot maintain itself in the reaches of the stream with dams without being replenished from small upstream refugia. These dams prevent the movement of shrimp from upstream refugia to downstream feeding, mating, and hiding sites.

The Giacomini seasonal dam was placed in the intertidal zone in the lower end of Lagunitas Creek in Marin County. This dam is nearly 10 miles downstream from usable shrimp habitat and is not expected to affect this species because the shrimp cannot tolerate brackish water. As the dam has prevented the intrusion of brackish water into the creek, it has increased the upstream usable habitat of the shrimp. There are no shrimp downstream of this dam to be adversely affected by siltation during annual dam construction.

Gravel and aggregate mining in the area has probably not harmed the shrimp since it provides a means by which gravel washed downstream from the seasonal dams can be removed from the dry steambed without significantly causing siltation. Gravel and aggregate mining is not done in the live stream and sorting, grading, and washing activities are done away from the stream. The tailings from this activity are placed in sediment ponds that do not allow effluent to enter the stream. Most of the damage to the shrimp habitat by gravel mining occurred prior to passage of the National Environmental Policy Act in 1970 and subsequent environmental legislation which prohibits certain activities in waterways. Present gravel and aggregate mining operations are not known to disturb or damage shrimp habitat.

Comment 3: Will the listing of the species mean an end to the construction of summer dams?

Service response: Changes in the size, number, method of construction, and method of removal of summer recreational dams on the Austin Creek system, which includes Austin, Kidd, and East Austin Creeks, have been required through the Corps of Engineers permitting process. Only East Austin has a population of shrimp, thus, only these dams may be affected by the listing through the Corps of Engineers permitting process.

These dams change a cool, slow-moving stream into a warm, long, narrow lake which lacks pool/riffle areas and overhanging vegetation, essential to the shrimp's survival. The present method of gravel dam removal (by letting the winter rains wash the dams out), is more harmful than the construction technique of pushing the gravel up from the streambed into gravel dams. When dams wash out, the gravel and fine silt are deposited in the undercut banks which are essential habitat for the shrimp (see comment 2). Presently, an experimental method of summer gravel dam construction is being tried under a Corps of Engineers permit to the Cazadero Dam Committee. As a condition of this permit, the present number (38) and size (5 to 8 feet high, approximately 12 feet at the top, 26 feet wide at the bottom, and 55 feet long to extend across the stream channel) of the dams on the Austin Creek system is to be reduced over a 5-year period. The number of beaches also will be reduced. These conditions were placed on the Cazadero Dam Committee permit to upgrade the habitat for anadromous fish species and to avoid adverse impacts to the shrimp in East Austin Creek. This new dam construction method involves digging a pit in the dry streambed and connecting the pit to the live stream by a culvert. Its impact on the shrimp habitat is not fully known. However, direct and indirect effects on the shrimp by siltation are significantly reduced because a swimming hole is formed outside of the live stream and the pool/riffle characteristics of the stream remain intact. Further, this method has been tried in East Austin Creek where there are three gravel dams. There are 24 summer gravel dams on the lower reaches of Austin Creek and the shrimp no longer occurs in these reaches of the stream. However, shrimp could occur in isolated refugia in the upper reaches of the stream. In its present state, Austin Creek is not suitable habitat because it lacks undercut banks and overhanging vegetation which are the essential habitat requirements for the shrimp. Extensive rehabilitation of the aquatic habitat would be necessary to convert this stream to usable shrimp habitat. When the number and size of the dams are decreased by 1990, a more natural pool to riffle ratio should occur in all streams in the Austin Creek system, which is desirable habitat for the shrimp. Overhanging vegetation can be encouraged to grow and provide shelter and food for the shrimp.

The Service will work through the section 7 consultation process of the Act to assist agencies in the planning phase of water dependent projects and measures are likely to be developed and implemented to reduce or avoid adverse effects on the shrimp and its habitat. The Service will provide technical assistance and advice to parties interested in increasing and enhancing the shrimp habitat through appropriate mitigation measures.

Comment 4: Several commenters were concerned that the shrimp will be collected and transferred into streams outside its known distribution, thus possibly making such other areas subject to the provisions of the Act.

Service response: Although shrimp could be placed in other streams in the area, it is doubtful that a population could become established because of the specific microhabitat requirements of the shrimp. Historically, these microhabitat requirements have limited the distribution of the shrimp. During the development of the recovery plan for this species, the Service will explore the need to reintroduce shrimp into areas from which they have been extirpated. It is generally Service policy not to introduce a species into an area outside of its known historical range. If a population of shrimp is discovered in areas not presently known to the Service, these shrimp will receive the same protection under the Act as those in known locations.

Comment 5: What are the economic impacts of listing the shrimp and what affect will the listing have on gravel operations, agriculture, urban development (construction), recreation,

and other activities in the three counties? Will the listing cause delays in projects? Commenters asked for assurances that there would be little, if any, economic impact and what appropriate mitigation measures would be acceptable to permit the activities to continue. It was suggested that the Service designate critical habitat and prepare an economic analysis as part of that proposal.

Service response: Under the Act and its implementing regulations, listing determinations are to be made solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. 16 U.S.C. 1533(b)(1)(A); 50 CFR 424.11(b).

Section 7(a) of the Act, as amended, requires 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 designated or proposed. 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 any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

One Federal activity that may affect the California freshwater shrimp is the authorization by the Corps of Engineers to construct summer dams. For example, the Cazadero Dam Committee has received a permit to construct 28 temporary summer dams on the Austin Creek system, three of which are on East Austin Creek. These gravel structures are built by local residents to impound water for swimming and fire control. This permit is valid until 1990, provided that the permittee adheres to the general and special conditions of the permit such as notification of California Department of Fish and Game and the Corps of Engineers about any changes to pemitted activities. Special permit conditions require the permittee to reduce the total number of dams from 33 to 25 on the Austin Creek system. This includes a reduction in the number of dams from 5 to 3 on East Austin Creek where the shirmp occurs. The permit conditions also require the permittee to reduce the size and height of these dams, including the amount of water impounded, and to reduce the number and size of beaches by 1990 on the entire Austin Creek system. The Corps of Engineers may modify, suspend, revoke, or cancel the permit at any time before 1990 if any of these conditions are not met by the permittee. These restrictions were devised for the benefit of anadromous fish and the freshwater shrimp. Other methods of water retention for summer recreation and municipal water supplies that do not adversely affect the shrimp are being explored, such as joining an existing aqueduct and reservoir system. The Soil Conservation Service and the Coastal Conservancy are actively assisting in conservation measures for the shrimp on Salmon and Blucher Creeks.

Project delays can be avoided when proper measures such as habitat restoration or stream enhancement are taken to conserve and protect the shrimp and its habitat in the early stages of the planning process. To prevent delays in urban development, gravel and aggregate mining, agricultural, and recreational projects, early consultation with the Service on issues concerning the shrimp and its habitat is advised. Section 7 consultation must be completed within 90 days and can be concurrent with other environmental reviews. Therefore, delays, if any, should be minimal. Through formal consultation, the Service determines whether, and in what manner, a Federal agency can carry out its proposed action consistent with the "jeopardy" prohibition of section 7(a)(2) of the Act. If the Service finds that the action is likely to jeopardize the continued existence of the shrimp, the Service will work with the Federal agency, and applicant, if any, to attempt to develop reasonable and prudent alternatives.

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 which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the California freshwater shrimp at this time for reasons given below (see Critical Habitat section below). An economic analysis is done only if critical habitat has been proposed. Regardless, the Secretary is required to base the decision to list a species on the best available scientific and commercial information and not on economic considerations.

Comment 6: One commenter asked why it took so long to propose the shrimp and what was done to prevent the listing.

Service response: The California freshwater shrimp was proposed as a threatened species on January 12, 1977, in the **Federal Register** (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796) under a provision of the 1978 amendments to the Endangered Species Act of 1973, which required withdrawal of all pending proposals if they were not finalized within 2 years of the proposal. On March 23, and October 30, 1980, the Service received a series of annotated maps delineating the known, current distribution of the shrimp based upon distributional data collected by California Department of Fish and Game in 1979 and 1980. Eng (1981) and Serpa (1985) submitted detailed information on the distribution, life history, and status of the shrimp. These maps and additional data provided significant new information on which to propose endangered status for the shrimp. In addition, work on listing other species precluded the Service from preparing and processing this proposal any earlier.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the California freshwater shrimp (*Syncaris pacifica*) should be classified as an endangered species. Procedures found at section 4 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 California freshwater shrimp (*Syncaris pacifica*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The preferred habitat of the California freshwater shrimp is quiet, tree-lined pools with undercut banks in free-flowing, permanent streams. Livestock, agricultural activities and development, water pollution, heavy earth-moving equipment, and residential development have encroached and/or threatened these stream banks. Siltation from poor soil conservation practices and the building of temporary summer dams have destroyed shrimp habitat. Water diversions from the streams, including pumping directly from the stream bottom, resulting in intermittent stream flow are also detrimental to the species. Many streams currently or historically

harboring the shrimp maintained a permanent flow. The shrimp is killed and its habitat is polluted if the water in summer dams is treated with chlorine or other chemicals to purify the water. These biocides are routinely placed in the water, resulting in aquatic invertebrate and plant die-offs each year. Various combinations of the above activities have extirpated the species from Stemple Creek, Laguna de Santa Rosa Creek, Santa Rosa Creek, and Atascadero Creek, and seriously reduced its range in the Napa River. These extirpations probably represent more than half of the historical range of the shrimp. The concrete lining of streams and rivers for flood control caused the extinction of *Syncaris pasadenae,* a species historically known from southern California. This flood control technique has extirpated the California freshwater shrimp in Santa Rosa Creek. The channelization and lining is likely to continue and increase as this area experiences rapid urban growth.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Not applicable.

C. *Disease or predation.* Predation by fish significantly threatens the California freshwater shrimp, especially in altered habitats where cover from tree roots and underwater vegetation has been reduced or is absent. Introduced bluegill (*Lepomis macrochirus*) exist in portions of Huichica Creek. Predation significantly threatens the California freshwater shrimp in East Austin Creek and Big Austin Creek where temporary summer dams confine steelhead (*Salmo gairdneri*), Sacramento squawfish (*Ptychocheilus grandis*), and Tule perch (*Hysterocarpus traski*) with the shrimp in artificial pools (Bill Cox, CDFG, pers. comm., 1985). The effect of these dams on shrimp and steelhead populations is being studied.

D. *The inadequacy of existing regulatory mechanisms.* The California State Fish and Game Commission listed the California freshwater shrimp as endangered. However, State law provides no protection on privately-owned lands. The species receives some protection in those portions of its range within Samuel P. Taylor State Park.

E. *Other natural or man-made factors affecting its continued existence.* In the past, the shrimp was capable of recovering from environmental extremes, such as drought and spring floods, that resulted in localized extirpations. Historic silvicultural practices may have limited the range of the species by altering normal hydrologic regime. Today, these natural events devastate populations of the shrimp because the current loss of suitable habitat makes it difficult to effectively repopulate affected areas.

Vandalism is a threat to the shrimp as more people in the area have become aware of its presence and site specific locations. Acts of vandalism such as placing toxicants into the water or deliberate spills of refined oil can be carried out by a single individual. One case was reported in 1987, when there was a die off of all aquatic invertebrates from East Austin Creek at the Boy Scout dam downstream almost to the confluence with Big Austin Creek as the result of the application of chlorine to the water. Although not carried out with the intention of harming the shrimp, the incident serves to illustrate the potential for vandalism.

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 the California freshwater shrimp as endangered. The continued degradation and loss of suitable habitat resulting from the threats discussed under Factor A in the "Summary of Factors Affecting the Species" could result shortly in a substantial loss of the remaining populations, especially those colonies in East Austin Creek. Because of conflicts with long standing economic interests and recreational practices in these streams harboring the California freshwater shrimp, the shrimp may shortly become extinct, as was the case with its congener, *Syncaris pasadenae.* Provided with protection from habitat degradation and loss, local isolated colonies may repopulate many portions of its historical range. Critical habitat is not being designated for the species at this time for the reasons discussed below.

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 which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the California freshwater shrimp at this time. As discussed under Factor E in the "Summary of Factors Affecting the Species," this species and its habitats are vulnerable to the introduction of water borne toxicants, and spills of refined oil and other such pollutants. Some such incidents could be carried out by a single individual, which makes the species vulnerable to acts of vandalism. These activities are difficult to regulate and control because the habitat of the shrimp predominately occurs on privately-owned land. Publication of critical habitat descriptions and maps would make this species and its habitats more vulnerable and would increase enforcement problems. The U.S. Army Corps of Engineers, the Federal agency most involved with the shrimp, is aware of the known localities. All other involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the California freshwater shrimp 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 designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. 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 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 formal consultation with the Service.

The only known Federal activities that may affect the California

freshwater shrimp is the authorization by the U.S. Army Corps of Engineers (Corps) for the construction of 28 temporary summer gravel dams on the Austin Creek system, and the Soil Conservation Service bank stabilization and repair projects on Salmon and Bulcher Creeks. The summer gravel dams are built by local residents to impound water for swimming and fire control. This permit is valid until 1990, provided that the permittee adheres to the general and special conditions of the permit such as consultation with the appropriate State and Federal agencies. Special permit conditions required the permittee to reduce the number, size, and height of these dams, including the amount of water impounded, and to reduce the number and size of beaches by 1990. The Corps may modify, suspend, revoke, or cancel the permit at any time before 1990 if any of these conditions are not met by the permittee. This permit does not cover the other temporary non-gravel dams and bridges. These projects are handled on a project-by-project basis.

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, import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. 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).

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Author

The primary author of this rule is Dr. Jeurel Singleton, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California. (916/978–4866 or FTS 460–4866).

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 "Crustaceans" 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						
Crustaceans							
* * * * *			*	*			
Shrimp, California freshwater	*Syncaris pacifica*	U.S.A.(CA)	NA	E	340	NA	NA
* * * * *			*	*			

Dated: October 4, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–25119 Filed 10–28–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 32

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 32 that pertain to migratory game bird, upland game, and big game hunting on

individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, 18th and C Streets NW., Room 2343, Washington, DC 20240; Telephone (202) 343–4313.

SUPPLEMENTARY INFORMATION: 50 CFR Part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations. Again this year, regulations for nontoxic shot are required on more refuges and consequently new regulations are being added.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On July 13, 1988, at 53 FR 26461, the Service published a proposed rulemaking to amend certain regulations in 50 CFR Part 32 and invited the public to comment. The Service's responses to those comments are contained in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from eight parties. In addition, an informal public meeting was held on the proposed deer hunt on the Supawna Meadows National Wildlife Refuge at Pennsville, New Jersey on July 28, 1988. Oral statements were received from several parties at that meeting. Several comments were similar or identical to those received on previous proposed rulemakings opening refuges to hunting and/or fishing contending generically that hunting on refuges is illegal, not in the spirit for which refuges are created, violates the Endangered Species Act, or is not in compliance with the National Environmental Policy Act or various laws or regulations. These issues have been addressed by the Service, see *e.g.* 51 FR 30655 of August 28, 1986, the final rule opening seven refuges to hunting and 11 to sport fishing, and the Service will not here repeat its responses given in that rulemaking.

Substantive comments on pertinent issues not already addressed in hunting and fishing plans, Environmental Assessments or section 7 Endangered Species Act consultations (all of which were available for public review during the comment period) are responded to below:

Issue: There is an inconsistency in the Service allowing toxic shot for hunting squirrels while requiring nontoxic shot to hunt waterfowl on the same refuge area.

Response: The Service does not agree that allowing the use of toxic shot for low intensity hunting of species seldom taking more than one shot per target, while requiring nontoxic shot for high intensity waterfowl hunting, usually requiring multiple shots per target, is an inconsistency but is rather a case of species-specific management of the problem of lead shot deposition/poisoning. Further, the Service has, in some cases, required the use of nontoxic shot for shotgun hunting of all species of game in areas of heavy waterfowl use when so requested by State game departments.

Issue: A National Organization lcoated in Washington, DC claimed that a thirty-day comment period is inadeqaute to properly analyze changes in hunting programs and their regulations, especially when supporting data, if any, is scattered around the country at the refuges and six regional offices and that there was a lack of data to support the changes.

Response: The Service notes that all documents supporting this action are on file in the Service's Washington, DC Office, available for public inspection. The Service believes that a 30-day comment period is adequate time for a business-like review and response on this and similar actions. To further delay implementing these regulations (by lengthening the comment period) would cause confusion to the public, deny a benefit to the public and related businesses and would not be in the best interest of the Service or the public. See the last paragraph of "Environmental Considerations."

Conformance With Statutory and Regulatory Authorities The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Considering the rapidly approaching hunting seasons and the ones presently taking place, there is an immediate need to place these regulations into effect. The absence of refuge-specific hunting

regulations for these hunting seasons would be contrary to the public interest (confusion on hours, bag limits, or firearm restrictions), and wildlife conservation (nontoxic shot requirements). Thus, the Department concludes that good cause exists within the meaning of 5 U.S.C. 553(d)(3) to make these regulations effective upon publication in the **Federal Register.**

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requries the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific hunting regulations will make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of E.O. 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB under #1018–0014 Economic and Public Use Permits. These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes enacted in this rulemaking will not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0837.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges).
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.12 is amended by removing (e)(2), redesignating (e)(1) as (e)(2); adding a new (e)(1); adding (f)(11)(vi); revising (i)(2) introductory text; removing (i)(2) (i) through (vi); revising (1)(2)(i) and (m)(1)(ii); removing (m)(1)(iii); redesignating (m)(1)(iv) as (iii); revising (m)(2), (n)(1) and (2); adding (q)(7)(iv); revising (t)(2) introductory text; removing (t)(2)(i) and (ii), (u)(1)(iii) and (u)(2)(iv); redesignating (u)(2)(v) as (iv); removing (u)(3)(iii); revising (w)(1) introductory text; removing (w)(1) (i) and (ii); revising (aa)(1), (cc)(2) introductory text and (cc)(2)(i); removing (cc)(2) (ii) through (vi); redesignating (gg)(2) through (4) as (3) through (5); adding a new (gg)(2); revising (hh)(4)(i), (hh)(10)(ii) and (hh)(11)(ii) and (iv); removing (11)(2); redesignating (11)(3) and (4) as (2) and (3); revising (mm)(5)(vi) and (mm)(7)(i) and (v); adding (pp)(6); revising (qq)(1)(i) and (4)(ii); adding (qq)(4)(v) and (vi), and (qq)(5)(vi); revising (qq)(6) and (qq)(7)(i), (iii) and (iv); adding (qq)(7)(vi); removing (rr)(1)(iii); revising (rr)(2) introductory text; removing (rr)(2)(i) and (ii); revising (rr)(3) introductory text; and removing (rr)(3)(i) and (ii).

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(e) *Arkansas—(1) Cache River National Wildlife Refuge.* Hunting of ducks, snow geese, coots, woodcock, snipe, and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(f) *California—*

(11) *San Francisco Bay National Wildlife Refuge* * * *

(vii) Waterfowl and coot hunters, in that portion of the refuge contained in Alameda County, shall possess and use, while in the field, only nontoxic shot.

* * * * *

(i) *Florida—** * *

(2) *Lower Suwannee National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(1) *Illinois—** * *

(2) *Crab Orchard National Wildlife Refuge.* * * *

(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbrair land areas, plus Orchard, Turkey, Sawmill and Grassy Islands, from sunrise to 12:00 noon each day during the goose season. Goose hunting on these areas, including lake shorelines, is permitted only from existing refuge blinds. Only selected hunters are allowed on these islands or are allowed to occupy any existing refuge blinds during the goose season. Controlled blind hunters may use or possess only ten (10) shells per hunter, except that water blind hunters may possess fifteen (15) shells during the duck season only.

* * * * *

(m) *Iowa—(1) DeSoto National Wildlife Refuge.* * * *

(ii) Hunting is permitted until noon each day from November 1 through the end of the State waterfowl season within the zones.

* * * * *

(2) *Union Slough National Wildlife Refuge.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: State regulations regarding the use of decoys, and governing the construction and use of blinds on game management areas shall apply.

* * * * *

(n) *Iowa, Illinois, and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Big Timber Division including Turkey and Otter Islands.

(i) Only temporary wood or brush blinds are permitted.

(2) Hunting is permitted on the Gardner Division.

(i) Blinds may only be constructed on blind sites posted by the Illinois Department of Conservation.

* * * * *

(q) *Louisiana—** * *

(7) *Tensas River National Wildlife Refuge.* * * *

(iv) Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(t) *Michigan—** * *

(2) *Shiawassee National Wildlife Refuge.* Hunting of geese is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(w) *Missouri—(1) Mingo National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(aa) *New Jersey—Edwin B. Forsythe National Wildlife Refuge.* * * *

(1) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(cc) *New York—** * *

(2) *Montezuma National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition:

(i) Permits/reservations are required in advance.

* * * * *

(gg) *Oklahoma—** * *

(2) *Salt Plains National Wildlife Refuge.* Hunting of ducks, geese, sandhill cranes and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

(ii) Hunters are required to check in and out of the refuge.

* * * * *

(hh) *Oregon—** * *

(4) *Cold Springs National Wildlife Refuge.* * * *

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christman Day and New Year's Day.

* * * * *

(10) *McKay Creek National Wildlife Refuge.** * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(11) *Umatilla National Wildlife Refuge.* * * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, and New Year's Day on the McCormack Unit.

* * * * *

(iv) Decoys, boats and other personal property must be removed from the refuge following each days hunt.

* * * * *

(mm) *Texas—** * *

(5) *McFaddin National Wildlife Refuge.** * *

(vi) Use of airboats is permitted only in accordance with specific guidelines as provided in 50 CFR 25.31.

* * * * *

(7) *Texas Point National Wildlife Refuge.** * *

(i) Hunting is permitted only on designated days. Notice of actual hunting days will be issued as provided in 50 CFR 25.31.

* * * * *

(v) Use of airboats is permitted only in accordance with guidelines as provided in 50 CFR 25.31.

* * * * *

(pp) *Virginia—Chincoteague National Wildlife Refuge.* * * *

(6) Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

(qq) *Washington—(1) Columbia National Wildlife Refuge.* * * *

(1) Permits are required for hunting in Farm Unit 226–227.

* * * * *

(4) *McNary National Wildlife Refuge.* * * *

(ii) In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(v) No decoys or other personal property may be placed on the refuge earlier than one hour before State shooting time or opening of the State waterfowl season, and must be removed from the refuge within one hour following the close of State shooting time.

(vi) Hunters in marked hunt site area must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

(5) *Ridgefield National Wildlife Refuge.* * * *

(vi) Hunting is permitted only from assigned blinds except when shooting to retrieve crippled birds.

(6) *Toppenish National Wildlife Refuge.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

(7) *Umatilla National Wildlife Refuge.*

* * *

(i) In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(iii) No decoys or other personal property may be placed on the refuge earlier than one hour before State shooting time or opening of the waterfowl season, and must be removed within one hour following the close of State shooting time.

(iv) Hunters may not use or possess more than twenty-five (25) shells per day in the Paterson Unit.

* * * * *

(vi) Digging or hunting from pit blinds is prohibited.

* * * * *

(rr) *Wisconsin*—* * *

(2) *Necedah National Wildlife Refuge.* Hunting of migratory game birds is permitted only on designated areas of the refuge.

(3) *Trempealeau National Wildlife Refuge.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

3. Section 32.22 is amended by revising (a)(4) introductory text; removing (a)(4) (i) through (vi); revising (b)(1) introductory text; redesignating (d)(2) through (6) as (3) through (7); adding a new (d)(2); revising (h)(2) introductory text; removing (h)(2) (i) through (v); revising (h)(3) introductory text; removing (h)(3) (i) through (iii); revising (l)(1) and (l)(2); revising (bb) (2); redesignating (ee) (1) and (2) through (4) as (2) and (4) through (6) respectively; adding new (ee) (1) and (3); removing (ff)(1), (2) and (ll); redesignating (ff) (3) through (10) as (1) through (8); revising the newly redesignated (ff)(1)(i), (6) (ii) and (8)(ii); revising (hh)(3) introductory text; removing (hh)(3) (i) through (iv); revising (nn)(3) (i) and (5)(ii).

§ 32.22 Refuge-specific regulations; upland game.

(a) *Alabama* * * *

(4) *Wheeler National Wildlife Refuge.* Hunting of squirrel, rabbit, racoon and opossum is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

(b) *Arizona—(1) Buenos Aires National Wildlife Refuge.* Hunting of cottontail rabbit, jackrabbit, coyote, fox, bobcat, ringtail, skunk, coatimundi, badger, racoon and weasel is permitted on designated areas of the refuge.

* * * * *

(d) *Arkansas*—* * *

(2) *Cache River National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, raccoon, opossum and beaver is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(h) *Florida*—* * *

(2) *Lower Suwannee National Wildlife.* Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *St. Marks National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(l) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Big Timber Division including Turkey and Otter Islands, and on the Gardner Division.

(2) Hunting of squirrel is permitted on the Keithsburg Division from the opening of the Illinois squirrel season until the start of the Illinois waterfowl season.

* * * * *

(bb) *New York*— * * *

(2) *Montezuma National Wildlife Refuge.* Hunting of small game mammals and legally hunted furbearers is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required for night hunting of furbearers.

(ii) Hunting is permitted from the close of the refuge deer hunting season through the close of the respective State small game season.

(iii) Shotguns only are permitted, except .22 caliber rimfire firearms may be used to take furbearers at night consistent with State law.

* * * * *

(ee) *Oklahoma—(1) Little River National Wildlife Refuge.* Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Access is limited to designated roads and trails.

* * * * *

(3) *Salt Plains National Wildlife Refuge.* Hunting of quail and pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters must check in and out of the refuge.

* * * * *

(ff) *Oregon)—(1) Cold Springs National Wildlife Refuge.* * * *

(i) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(6) *McKay Creek National Wildlife Refuge.* * * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(8) *Umatilla National Wildlife Refuge.*

* * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's day on the McCormack Unit.

* * * * *

(hh) *South Carolina*—* * *

(3) *Santee National Wildlife Refuge.* Hunting is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(nn) *Washington*—* * *

(3) *McNary National Wildlife Refuge.*

* * *

(i) Hunting is permitted, by shotgun or bow and flu-flu arrow, only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

(5) *Umatilla National Wildlife Refuge.** * *

(ii) Hunting is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Year's Day on the Paterson Unit.

* * * * *

4. Section 32.32 is amended by revising (a)(3) introductory text; removing (a)(3)(i) through (iv); revising (b)(1); redesignating (d)(2) through (5) as (3) through (6); adding a new (d)(2); revising (h)(3) introductory text; removing (h)(3)(i) through (v); revising (h)(4) introductory text; removing (h)(4)(i) through (viii); revising (i)(4) introductory text; removing (i)(4)(i)

through (vii); revising (i)(5) introductory text; removing (i)(5)(i) through (x); revising (1)(3); removing (n)(1); redesignating (n)(2) and (3) as (1) and (2); revising newly redesignated (n)(1) and (2); revising (p)(2); revising (r)(3) introductory text; removing (r)(3)(i) through (vii); revising (v)(2) and (5); adding (v)(8) and (x)(4)(iii); revising (bb)(2)(iii); redesignating (dd)(1) through (4) as (dd)(2)(i) through (iv); adding (dd)(1); revising (ff)(2) introductory text; removing (ff)(2)(i) and (ii); adding (gg)(2)(v) through (vii); revising (gg)(4)(ii); removing (gg)(4)(iii); redesignating (gg)(4)(iv) through (vi) as (iii) through (v); revising (11)(4) introductory text; removing (11)(4)(ii) through (vi); and adding (rr)(3)(vi) and (vii).

§ 32.32 Refuge-specific regulations; big game.

(a) *Alabama*—* * *

(3) *Wheeler National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(b) *Arizona—(1) Buenos Aires National Wildlife Refuge.* Hunting of mule and white-tailed deer, javelina, feral hogs and mountain lions is permitted on designated areas of the refuge.

* * * * *

(d) *Arkansas*—* * *

(2) *Cache River National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(h) *Florida*—* * *

(3) *Lower Suwannee National Wildlife Refuge.* Hunting of big game is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *St. Marks National Wildlife Refuge.* Hunting of white-tailed deer, turkeys and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(i) *Georgia*—* * *

(4) *Okefenokee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(5) *Piedmont National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(1) *Illinois—Crab Orchard National Wildlife Refuge.* * * *

(3) Hunters using Area II are required to check in at the refuge visitor contact center prior to hunting.

* * * * *

(n) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Firearms hunting is permitted on the Bear Creek Unit of the Gardner Division. Firearms hunting is permitted on the remainder of the Gardner Division only during part of the November firearms season, from one-half hour before sunrise to 3:00 p.m. Permits are required.

(2) Archery hunting is permitted on the Gardner Division.

* * * * *

(p) *Iowa*—* * *

(2) *Union Slough National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) The construction or use of permanent blinds, stands or ladders is prohibited.

(ii) All stands must be removed from the refuge by the end of the season.

* * * * *

(r) *Louisiana*—* * *

(3) *Catahoula National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

* * * * *

(v) *Massachusetts—Parker River National Wildlife Refuge.* * * *

(2) Hunting is permitted from one-half hour before sunrise until 2:00 p.m.

* * * * *

(5) Hunting is permitted on six days within the framework of the State shotgun deer season.

* * * * *

(8) Only antlerless deer may be harvested, under appropriate State permits, on days one and two of the refuge hunt.

* * * * *

(x) *Minnesota*—* * *

(4) *Rice Lake National Wildlife Refuge.* * * *

(iii) Permits are required.

* * * * *

(bb) *Nebraska*—* * *

(2) *DeSoto National Wildlife Refuge.* * * *

(iii) Muzzleloader hunting of deer is permitted only on designated areas of the refuge and only during the special State season. Hunters must check in and out of the refuge.

* * * * *

(dd) *New Jersey—(1) Edwin B. Forsythe National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A State permit for the appropriate New Jersey Deer Management Zone is required.

(ii) Refuge hunting hours are consistent with State hunting hours. Hunters may enter the refuge no earlier than two hours before shooting time and leave no later than one hour after the end of shooting hours.

(iii) Use or possession of alcoholic beverages while hunting is prohibited.

* * * * *

(3) *Supawna Meadows National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

(i) A State permit for the appropriate New Jersey Deer Management Zone is required.

(ii) In addition to the State permit, a Special Use Deer Hunting Permit issued by the refuge is required.

(iii) All hunters must attend a refuge hunter orientation session.

* * * * *

(ff) *New York*—* * *

(2) *Montezuma National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(gg) *North Carolina*—* * *

(2) *Great Dismal Swamp National Wildlife Refuge.* * * *

(v) Hunters are required to sign in and out on each hunt day.

(vi) The daily bag limit is two (2) deer, either sex.

(vii) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

* * * * *

(4) *Pee Dee National Wildlife Refuge.* * * *

(ii) Muzzleloader hunting is permitted on Tuesday and Wednesday following the first Saturday in November.

* * * * *

(11) *South Carolina*—* * *

(4) *Santee National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(rr) *Virginia*—* * *

(3) *Great Dismal Swamp National Wildlife Refuge.* * * *

(vi) Hunters are required to sign in and out on each hunt day.

(vii) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

* * * * *

Dated: September 28, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-24906 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 53, No. 210
Monday, October 31, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. 1

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the third quarter, July through September, of 1988. The agenda is issued to provide the public with information about NRC's rulemaking activities. Each issue of the agenda includes information for one quarter of the calendar year. The agenda briefly describes and gives the status for each rule that the NRC is considering, has proposed, or has published with an effective date. It also describes and gives the status of each petition for rulemaking that the NRC is considering.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 7, No. 2, is available for inspection and copying for a fee at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, 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, Telephone: (301) 492–7758, toll free number (800) 368–5642.

Dated at Bethesda, Maryland, this 13th day of October 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management.

[FR Doc. 88–25083 Filed 10–28–88; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Part 20

[Docket No. PRM–20–18]

The Rockefeller University; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated August 16, 1988, which was filed with the Commission by The Rockefeller University. The petition was docketed by the Commission on September 13, 1988, and has been assigned Docket No. PRM–20–18. The petitioner requests that the Commission amend its regulations to permit a licensee to dispose of solid biomedical waste containing small amounts of radioactivity by on-site incineration. The petitioner believes this to be a reasonable alternative to burial of the wastes at a commercial low-level radioactive waste site.

DATE: Submit comments by December 30, 1988. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write 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.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules Review Section, 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, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) has established regulations that permit a licensee to dispose of certain materials contaminated with small amounts of certain radioactive isotopes without regard to its radioactivity (10 CFR 20.306). The petitioner requests that the NRC expand this regulation by classifying the disposal of solid biomedical wastes such as paper, glass, and plastic trash containing small amounts of hydrogen-3 and carbon-14 as below regulatory concern. The petitioner would then be able to dispose of the material by on-site incineration. To accomplish the desired amendment, the petitioner suggests that the following specific language be added to 10 CFR 20.306: "Any licensee may dispose of the following licensed material by incineration on site. 0.05 microcuries or less of hydrogen-3 or carbon-14, per gram of solid waste up to 1 Ci of hydrogen-3 and 0.1 Ci of carbon-14 per year," with the application of a summation rule for radionuclide mixtures.

The petitioner believes that the classification of this type of waste as below regulatory concern is a reasonable alternative to burial of the waste at a commercial low-level radioactive waste site. According to the petitioner, a generic rulemaking of the type suggested would reduce the number of waste generators and the amounts of unstable Class A radioactive material that is now shipped for burial. The petitioner believes that the reduction in volume and number of shipments would facilitate better management of remaining radioactive wastes and reduce the potential exposure to waste handlers and individuals along transit routes. The petitioner believes that the suggested amendment would save biomedical institutions significant cost expenditures and that the funds could be better used for basic and clinical research.

According to the petitioner, 90 percent of the radioactive material which must be shipped to commercial low-level radioactive waste sites for burial contains hydrogen-3 and carbon-14. The petitioner asserts that most of the hydrogen-3 and carbon-14 eventually escapes into the atmosphere whether it is buried or incinerated. Furthermore, the petitioner states that incineration results in a monitored, controlled release of basic compounds while releases from burial sites are not monitored. The petitioner states that, in relation to the amounts of hydrogen-3 and carbon-14 present in the environment, the amounts that would be added through the incineration of biomedical waste would be infinitesimal.

The petitioner would incinerate the biomedical waste in an on-site, operating, controlled air incinerator which is permitted to burn 300 pounds of animal tissues and 100 pounds of plastics and hospital wastes per hour. If the petitioner's request is granted, the petitioner anticipates incinerating approximately 5000 pounds of radioactively contaminated solid wastes yearly. Based on inventory and disposal manifests, the incinerated waste would contain less than 500 millicuries of hydrogen-3 and 10 millicuries of carbon-14.

According to the disposal manifests of all institutions in New York City for 1987, 10,000 cubic feet of solid waste, containing a total of 5.4 curies of hydrogen-3 and 0.2 curie of carbon-14, were shipped to commercial disposal facilities. The average concentration of radioactivity in these materials was 0.02 microcurie per gram. Using the IMPACTS-BRC methodology in which all of the material containing hydrogen-3 and carbon-14 from New York City is disposed of through on-site incineration, the maximum dose to an off-site individual would be 0.0085 millirem per year. Thus, the petitioner contends that the total amounts of radioactivity that would be released as a result of the requested action creates no adverse health effects.

The petition has been reviewed in relation to the Commission's policy statement on petitions for disposal of radioactive waste streams below regulatory concern, Appendix B to 10 CFR Part 2 (51 FR 30839; August 29, 1986). It has been found that the petition does not contain sufficient information to qualify for expedited handling in accordance with this policy statement and its staff implementation plan (51 FR 30840; August 29, 1986).

Dated at Rockville, Maryland, this 25th day of October, 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-25087 Filed 10-28-88; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Organization; Conservatorships and Receiverships

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) Board proposes for public comment revisions to its regulations governing receiverships and conservatorships that relate to the sale and transfer of loans of an institution in receivership and the definition of insolvency. The FCA Board proposes to delete § 611.1165, which provides direction to the receiver of an association in selling loans. The general authority of the receiver to sell assets of an association is already stated in existing § 611.1161(1). This authority also applies to receivers of banks in liquidation pursuant to § 611.1171, which incorporates § 611.1161 by reference. Insolvency is currently defined in § 611.1156(b)(1). Because the Agricultural Credit Act of 1987 (the 1987 Act) designates a class of stock as "eligible borrower stock," the FCA Board proposes to amend § 611.1156(b)(1) to redefine insolvency as the point at which FCA has confirmed that the institution's permanent capital as defined in section 4.3A(a)(1) of the Farm Credit Act of 1971 (Act) has been exhausted or reasonable cause exists to believe that permanent capital is about to be exhausted. This change would also permit FCA to confirm insolvency through means other than examination.

DATE: Comments must be received by November 21, 1988.

ADDRESSES: Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eldon Stoehr, Regional Director, Northeast Region, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4251, TDD (703) 883-4444

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444

SUPPLEMENTARY INFORMATION: On May 12, 1988 the FCA published for public comment proposed amendments to 12 CFR Part 611, Subparts K, L, M, and N (53 FR 16934). In response, the Farm Credit Corporation of America (FCCA) submitted comments stating that while current § 611.1165 addresses the sale and transfer of loans of an association in receivership, no corresponding provision exists in Subpart M, dealing with liquidation of banks. The FCCA therefore requested FCA to issue proposed regulations addressing the sale of loans of a bank in receivership to expressly authorize the sale of these loans to non-Farm Credit System lenders. This comment was concurred with by the Farm Credit Bank of Baltimore.

In addressing this comment, the FCA Board proposes to amend 12 CFR Part 611, Subpart L by deleting § 611.1165, Sale and Transfer of Loans to clarify the authority of a receiver to sell assets. The general authority of the receiver to sell assets of an association is already stated in existing § 611.1161(1). This authority applies to receivers of banks in liquidation pursuant to § 611.1171, which incorporates § 611.1161 by reference. Receivers for both associations and banks in receivership are therefore already empowered to sell assets to any willing buyer. Section 611.1165 provides direction to the receiver of an association in selling loans, which could be a barrier to the receiver in obtaining the highest return on the sale of assets for the benefit of creditors and stockholders.

Additionally, section 101 of the 1987 Act added section 4.9A to the Act. New section 4.9A designates a class of stock as eligible borrower stock for which holders are guaranteed par value upon its retirement, even when the book value is less than par. Conversely, section 4.3A(a)(1) of the Act, added by section 301 of the 1987 Act, defines permanent capital as all stock with the exception of eligible borrower stock and stock that may be retired upon repayment of the loan or at the option or request of the holder, thereby providing that permanent stock is at risk. Therefore, consistent with the intent of Congress to have permanent capital at risk, the FCA Board proposes to amend § 611.1156(b)(1) to redefine insolvency

as the point at which FCA has confirmed that the institution's permanent capital as defined in section 4.3A(a)(1) has been exhausted or reasonable cause exists to believe that permanent capital is about to be exhausted. This definition is intended to clearly establish that permanent stock of institutions is at risk, while retaining the flexibility to appoint a receiver before permanent capital is absolutely exhausted. This proposed amendment would also permit the FCA to confirm insolvency through means other than examination.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0–7.13; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a–2279f–1; secs. 411 and 412 of Pub. L. 100–233.

Subpart K—Appointment of Conservators and Receivers

2. Section 611.1156 is amended by revising paragraph (b)(1) as follows:

§ 611.1156 Grounds for Appointment of Conservators and Receivers.

* * * * *

(b) * * *

(1) The institution is insolvent. "Insolvency" is defined as the point at which the FCA has confirmed that permanent capital as defined in section 4.3A(a)(1) of the Act has been exhausted, or reasonable cause exists to believe that permanent capital is about to be exhausted.

* * * * *

Subpart L—Liquidation of Associations

§ 611.1165 [Removed and Reserved.]

3. Section 611.1165 is removed and reserved.

Date: October 26, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–25126 Filed 10–28–88; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 88–ACE–10]

Proposed Establishment of Jet Route J–233; Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to establish new Jet Route J–233 located in the vicinity of Waterloo, IA. This route would bypass the arrival/departure routes in the Chicago terminal area. This action would improve the traffic flow in the Chicago area, aid flight planning and reduce delays.

DATES: Comments must be received on or before December 12, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:

Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 88–ACE–10, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ACE–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J–233 located in the vicinity of Waterloo, IA. The proposed route would establish a routing to/from Minneapolis, MN, through the Chicago area that would provide a safe, orderly and expeditious flow of traffic. This action would save fuel, aid flight planning, and controller coordination. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034;

February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

the proposed amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows;

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–233 [New]

From Waterloo, IA; INT Waterloo 190°T(184°M) and St. Louis, MO, 318°T(313°M) radials; to St. Louis.

Issued in Washington, DC, on October 18, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–25033 Filed 10–28–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Parts 524, 525, and 529

Employment of Workers With Disabilities Under Special Certificates

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing comments regarding a proposed rule intended to implement the 1986 Amendments to section 14(c) of the Fair Labor Standards Act (FLSA). This action is taken to permit submission of additional comments from interested parties as well as consideration of comments received after the close of the initial comment period.

DATE: Comments must be received on or before November 15, 1988.

ADDRESS: Send comments to: Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are asked to include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Nancy M. Flynn, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1988 (53 FR 18234), the Department of Labor published a proposed rule intended to revise 29 CFR Parts 524, 525, and 529, which concern the employment of workers with disabilities under special certificates. Interested persons were requested to submit comments on or before July 19, 1988.

Because of the continuing interest in this proposal, the Department believes that it is desirable to reopen and extend the period for public comment by all interested persons. Therefore, the comment period for the proposed rule revising 29 CFR Parts 524 (Special Minimum Wages for Handicapped Workers in Competitive Employment), 525 (Employment of Handicapped Clients in Sheltered Workshops), and 529 (Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages), is reopened and extended to October 31, 1988. Individuals who submitted comments in response to the initial notice which were received after the close of the initial comment period are not required to resubmit such comments.

Signed at Washington, DC, on this 25th day of October, 1988.

Ann McLaughlin,

Secretary of Labor.

Alan McMillan,

Deputy Assistant Secretary for Employment Standards.

Paula V. Smith

Administrator, Wage and Hour Division.

[FR Doc 88–25125 Filed 10–28–88; 8:45 am]

BILLING CODE 4510–27–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR 301, 302, 305, 308

[CRT Docket No. 88–3–RM]

Modification of Rules of Procedure

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend several of the rules of procedure governing the conduct of Tribunal rate adjustment and distribution proceedings, as well as other agency procedures. This notice is a result of the agency's internal review of its regulations and is intended to improve the efficiency of the proceedings, and in certain cases, to conform to changes in U.S. law.

DATES: Comments are due December 15, 1988.

ADDRESS: An original and five copies of the comments shall be submitted to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, (202) 653–5175.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal has initiated a review of its rules regarding the conduct of the copyright royalty rate adjustment and distribution proceedings, as well as other agency practices, and believes that several regulations should be modified to achieve greater efficiency or, in some cases, to conform with certain changes in U.S. law. Three of the proposals should result in a reduction in the paperwork burden on the claimants—reducing the number of copies of pleadings to be filed from 15 to two plus the number of sitting Commissioners, eliminating the third element of the jukebox claim, and eliminating the jukebox procedure called justification of claim. The changes are described as follows:

Section 301.7. For six months in 1985, there were two sitting Commissioners on the Tribunal. The Copyright Act authorizes five Commissioners. The Tribunal issued an interpretation at that time stating that two Commissioners could carry out the business of the agency. To eliminate any remaining ambiguity, the Tribunal is proposing to amend § 301.7(b) to state that a quorum consists of a majority of "sitting" members of the Tribunal.

Section 301.14. The Government in the Sunshine Act requires that the general counsel of an agency certify when a meeting may be properly closed to the public. The Tribunal drafted its Sunshine Act regulations at a time when there was no position of general counsel in the agency, so the function was given to the Chairman. The Tribunal proposes to amend § 301.14(b) and (c) to substitute the general counsel for the Chairman as the agency official to certify that a meeting may be closed to the public.

Section 301.22. The Freedom of Information Reform Act of 1986 (FOIRA) introduced new fee and fee waiver guidelines. The Tribunal proposes to amend § 301.22 to implement a new fee policy based on the FOIRA guidelines.

Subpart E—Procedures and Regulations. Prior to the 1983 cable distribution proceeding, the Tribunal asked the parties to recommend modifications of the Tribunal's hearing procedures. Many of the parties' recommendations were adopted for the 1983 cable distribution proceeding and have been followed regularly since then. Some of the recommendations were already a part of the Tribunal's rules. Therefore, the Tribunal is proposing to revise Subpart E to incorporate many of the procedures the Tribunal has been following since the 1983 proceeding. In addition, the Tribunal proposes to cut down considerably the number of copies required of parties who file pleadings, to require that foreign language submissions be accompanied by English language translations, and to indicate that in the case of a hearing presided by two Commissioners, it takes a "yes" vote by both Commissioners to either sustain an objection, or carry a motion.

Sections 301.63 and 64. As currently written, these sections establish a 90-day period at the beginning of ratesetting years or FCC rule changes when the Tribunal can accept petitions for rate adjustments and can join them together or accept comments on them. However, it states that the Tribunal shall not begin to consider any of the petitions before the expiration of the ninety days. While this provision was originally intended to allow the parties time to negotiate settlements, the Tribunal believes this procedure is too restrictive. The Tribunal proposes to modify §§ 301.63 and 301.64 to permit earlier consideration of rate adjustment petitions.

Section 301.66 and 74. These sections require the Tribunal to publish proposed final determinations in distribution and in rate adjustment proceedings unless to do so would mean going past the statutory deadline. The Tribunal believes that this procedure should not be required, but should be an option for the Tribunal if the Tribunal believes it would serve a useful end.

Subpart H—Multidistrict Appeals. Title 28 of the U.S. Code was amended this year to institute a new procedure to apply when appeals of an agency's decision are taken to more than one U.S. Court of Appeals. A new Subpart H is proposed to indicate the procedures that are to be followed by the parties to the multidistrict litigation and the general counsel.

Sections 302.2, 302.3, 302.6 and 302.7. Section 302.2, 302.3 and 302.6 are out-of-date, as well as certain parts of § 302.7. It is proposed to delete §§ 302.2, 302.3 and 302.6 and to modify § 302.7 to remove the obsolete language.

Section 302.8. The Tribunal has experienced certain problems with late-filed cable claims, and wishes to make clear what constitutes an acceptable filing and what does not. The Tribunal proposes that for a claim to be considered to have been filed during the month of July, it must either be filed in the Tribunal's offices during regular business hours in July or to be postmarked by the United States Postal Service during the month of July. The Tribunal will not consider acceptable mail dated by the business' own postage meter received after July 31.

Section 305.2. The Tribunal proposes to add a sentence to § 305.2 to parallel the provisions in the cable sections which states that failure to file a timely jukebox claim will forfeit all entitlement to the previous years' fund.

Section 305.3. The Tribunal proposes to eliminate the third requirement of a valid jukebox claim. We find that the third requirement, that the claimant agree to abide by the Tribunal's determination, except for the claimant's right to appeal, is a truism that adds nothing to the claim. ASCAP, BMI and SESAC have requested that the Tribunal add a new element to the claim—to require claimants to indicate whether the claimant is a copyright owner or a performing rights society. The Tribunal views that it can get this information from the claimants at a later date, and does not believe this information is necessary to be part of the claim.

Section 305.4. The Tribunal proposes to eliminate the procedure called Justification of Claim. This procedure applied more usefully when the Tribunal conducted "paper" proceedings to determine entitlement to jukebox royalties. It has since been superceded by the oral hearings conducted each year since the 1982/83 consolidated proceeding. However, the Tribunal retains the option to return to "paper" proceedings if and when it believes that the ends of justice are better met.

A new § 305.4 is being proposed which will parallel § 302.8 and make clear what is considered a timely-filed jukebox claim.

Sections 301.70, 302.1, 302.10 and 308.2. In 1986, the Copyright Act was amended to delete section 111(d)(1), the notice requirement for new cable systems. Consequently, subparagraphs (d)(2), (d)(3), (d)(4) and (d)(5) were redesignated. The Tribunal proposes to amend its rules to conform with the change in the Copyright Act.

List of Subjects

37 CFR Part 301

Administrative practice and procedure, Freedom of information, Sunshine Act.

37 CFR Part 302

Cable television, Claims, Copyright. Claims, Copyright, Jukeboxes.

37 CFR Part 305

Claims, Copyright, Jukeboxes

37 CFR Part 308

Cable television, Copyright, Rates.

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

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

Authority: 17 U.S.C. 803(a).

2. In § 301.7, paragraph (b) is proposed to be revised as follows:

§ 301.7 Proceedings.

* * * * *

(b) *Quorum.* A majority of the sitting members of the Tribunal constitutes a quorum.

* * * * *

3. In § 301.14, paragraphs (b) and (c) introductory text are proposed to be revised as follows:

§ 301.14 Procedure for closing meetings.

* * * * *

(b) Before a discussion to close a meeting or withhold information, the General Counsel must certify that, in his or her opinion, such a step is permissible, and the General Counsel shall cite the appropriate exemption under § 301.13. This certification shall be included in the announcement of the meeting and be maintained as part of the Tribunal's records.

(c) Following such a vote, and by the end of the working day, the General

Counsel must transmit the following information to the **Federal Register** for publication:

* * * * *

4. Section 301.22 is propsoed to be revised as follows:

§ 301.22 Public access.

(a) *Requesting information.* Information may be requested from the Tribunal in person, by telephone, or by mail. If the material sought is not a Tribunal record, is exempted, or for some reason is unavailable, the person requesting it will be so informed and, in the case of an "exempted record," will be explained the reason for the exemption and the procedure for appeal under the Freedom of Information Act, § 301.13.

(b) *Fees.* Fees for copies of Tribunal records are $.20 per page; $20 for each hour or fraction thereof spent searching for records; $5 for certification of each document; and the actual costs to the Tribunal for any other costs incurred.

(c) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Tribunal personnel in searching for the requested document and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. Commercial users include all claimants or petitioners for rate adjustments whose interest in the information is to further their case preparation before the Tribunal.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and noncommercial scientific institutions—Where a request seeks disclosure of records to an educational or noncommercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceed 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or noncommercial scientific research programs. To that extent, educational or noncommercial scientific institutions which are claimants or petitioners before the agency are considered "commercial users." "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education which operates a program or programs of scholarly research. "Noncommercial scientific institution" refers to an institution that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular products or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than paragraphs (c) (1), (2), or (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(d) *Aggregating of requests.* If there exists a substantial basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(e) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(f) *Advance payments.* If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250, the requester may be required to pay the fees in advance. If a requester has previously failed to make timely payment of fees, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request.

(g) *Nonpayment.* In the event of nonpayment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982, including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(h) *Waiver or reduction of charges.* The Tribunal shall waive the fee, or grant a fee reduction, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. The Tribunal will not charge if the costs of routine collection and processing of the fee is likely to equal or exceed the amount of the fee. However, the Tribunal has determined that the cost of writing up the invoice and transmitting the fees to the Treasury Department is *de minimis* and is not a basis for not collecting a fee.

5. In Subpart E of Part 301, the table of contents is proposed to be revised as follows:

Subpart E—Procedures and Regulations

Subpart E—Procedures and Regulations

§§ 301.44, 301.46, 301.49, 301.52, 301.53 [Removed]

6. Sections 301.44, 301.46, 301.49, 301.52 and 301.53 are proposed to be removed.

§§ 301.45, 301.47, 301.48, 301.50, 301.51, 301.54, 301.55 [Redesignated as §§ 301.51, 301.50, 301.52, 301.55, 301.49, 301.53, 301.54, respectively]

7. Sections 301.45, 301.47, 301.48, 301.50, 301.51, 301.54, and 301.55 are proposed to be redesignated 301.51, 301.50, 301.52, 301.55, 301.49, 301.53 and 301.54, respectively.

8. A new § 301.44 is proposed to be added as follows:

§ 301.44 Written cases.

(a) Unless otherwise structured by the Tribunal, rate adjustment proceedings and royalty fee distribution proceedings shall begin with the filing of the written direct cases of the parties who have filed a notice of intent to participate in the hearing. All interested persons will be afforded an opportunity to participate in any proceeding and submit written data, views, or argument, with or without the opportunity to present the same orally.

(b) The written direct case shall include all testimony, including each witness' background and qualifications, along with all the exhibits to be presented in the case.

(c) Each party may designate a portion of past records which it wants included in its direct case. Complete testimony of each witness whose testimony is designated (i.e., direct, cross and redirect) must be referenced.

(d) In the case of a royalty fee distribution proceeding, each party must state in the written direct case its percentage or dollar claim to the fund. In the case of a rate adjustment proceeding, each party must state its requested rate. No party will be precluded from revising its claim or its requested rate at any time during the proceeding up to the filing of reply proposed findings of fact and conclusions of law.

(e) No evidence, including exhibits, may be submitted in the written direct case without a sponsoring witness, except where oficial notice is proper or in the case of incorporation by reference of past records.

(f) Unless otherwise structured by the Tribunal, written rebuttal cases of the parties shall be filed at a time designated by the Tribunal upon the conclusion of the hearing of the direct case in the same form and manner as the direct case, except that the claim or the requested rate shall not have to be included if it has not changed from the direct case.

9. A new § 301.45 is proposed to be added as follows:

§ 301.45 Filing and service of written cases and pleadings.

(a) *Copies.* In all filings with the Tribunal, the party shall file an original plus two copies plus a copy for each sitting Commissioner. In the case of exhibits whose bulk or whose cost of reproduction would unnecessarily encumber the record or burden the party, the Tribunal may reduce the number of required copies.

(b) *English language translations.* In all filings with the Tribunal, each submission which is in a language other than English shall be accompanied by an English language translation, duly verified under oath to be a true translation. Any other party to the proceeding may, in response, submit its own English language translation, similarly verified.

(c) *Affidavits.* The testimony of each witness in a party's written case, direct or rebuttal, shall be accompanied by an affidavit supporting the testimony.

(d) *Subscription and Verification.* (1) The original of all documents filed by any party represented by counsel shall be signed by at least one attorney of record and list the attorney's address and telephone number. All copies shall be confirmed. Except for English language translations, written cases, or when otherwise required, documents signed by the attorney for a party need not be verified or accompanied by an affidavit. The signature of an attorney constitutes certificates by him that he has read the document, that to the best of his knowledge and belief there is good ground to support it, and that it has not been interposed for delay.

(2) The original of all documents filed by a party not represented by counsel shall be both signed and verified by that party and list that party's address and telephone number.

(3) The original of a document that is not signed, or is signed with intent to defeat the purpose of this section, may be stricken as sham and false and the matter proceed as though the document had not been filed.

(e) *Service.* In all filings with the Tribunal, a copy shall be served upon the counsel of all other parties identified in the Tribunal's service list, or if the party is unrepresented by counsel, upon the party itself. Proof of service shall accompany the filing with the Tribunal.

10. A new § 301.46 is proposed to be added as follows:

§ 301.46 Discovery.

(a) Unless otherwise structured by the Tribunal, a period shall be designated following the filing of the written direct and rebuttal cases in which parties may request of an opposing party non-privileged underlying documents related to the written exhibits and testimony.

(b) Any party may file pre-hearing objections to any portion of another party's written case on any proper ground, including, without limitation, relevance, competency, and failure to provide underlying documents.

(c) Within this period, each party may amend its direct evidence solely to meet the objections raised by the other parties or to respond to requests by the Tribunal. Such amendments must be filed with the Tribunal and exchanged with all parties.

11. A new § 301.47 is proposed to be added as follows:

§ 301.47 Conduct of proceedings—role of Commissioners.

(a) At the opening of the proceeding, the Chairman shall announce the subject under consideration.

(b) Only Commissioners of the Tribunal, authorized Tribunal staff, or counsel as provided in this chapter shall question witnesses.

(c) Subject to the vote of the Tribunal, the Chairman will have the responsibility for:

(1) Setting the order of presentation of evidence and appearance of witnesses;

(2) Administering oaths and affirmations to all witnesses;

(3) Announcing the Tribunal's ruling on objections and motions and all rulings with respect to introducing or excluding documentary or other evidence. In the case where there are two Commissioners sitting at hearing, it takes two affirmative votes to carry a motion or sustain an objection.

(4) Regulating the course of the proceedings and the decorum of the parties and their counsel, and insuring that the proceedings are fair and impartial;

(5) Announcing the schedule of subsequent hearing;

(6) Taking any other action which is consistent with this chapter and which has been authorized by the Tribunal.

(d) Each Commissioner may examine any witness or call upon any party for the production of additional evidence at any time. Further examination, cross-examination, or redirect examination by counsel relevant to the inquiry initiated by a Commissioner may be allowed by the Tribunal but only to the extent it is deemed necessary to complete the record.

12. A new § 301.48 is proposed to be added as follows:

§ 301.48 Conduct of proceedings—witnesses and counsel.

(a) With all due regard for the convenience of the witnesses, proceedings shall be conducted as expeditiously as possible.

(b) Each claimant group or party requesting a rate adjustment may present its opening statement with the presentation of its direct case.

(c) All witnesses at Tribunal proceedings shall be required to take an oath or affirmation before testifying; however attorneys who do not appear as witnesses shall not be required to do so.

(d) Witnesses shall first be examined by their attorney and by opposing attorneys for their competency to support their written testimony and exhibits (voir dire).

(e) Witnesses may then summarize, highlight or read their written testimony. However, they may not go beyond the scope of their written testimony, unless the Tribunal expands the scope to complete the record.

(f) Parties are entitled to raise objections to evidence on any proper ground during the course of the hearing, including that an opposing party has not furnished non-privileged underlying documents. However, they may not raise objections which could have been raised prior to the hearing without leave from the Tribunal.

(g) All written testimony and exhibits will be received into the record, except that to which the Tribunal sustains an objection; no separate motion will be required.

(h) If the Tribunal rejects or excludes testimony and an offer of proof is made, the offer of proof shall consist of a statement of the substance of the evidence which it is contended would have been adduced. In the case of documentary or written evidence, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(i) Cumulative evidence will be discouraged by the Tribunal and the Tribunal may limit the number of witnesses that may be heard in behalf of any one party on any one issue.

(j) Parties are entitled to cross-examination and redirect examination. Cross-examination is limited to matters raised on direct examination. Redirect examination is limited to matters raised on cross-examination. The Tribunal, however, may limit cross-examination and redirect examination if in its judgment this evidence or examination would be cumulative or cause undue delay.

(k) Documents which have not been exchanged in advance may be shown a witness on cross-examination. However, copies of such documents must be distributed to the Tribunal and to other participants or their counsel at hearing at the time of cross-examination, unless the Tribunal directs otherwise. If the document is not, or will not be, supported by a witness for the cross-examining party, that document can be used solely to impeach the witness' direct testimony and cannot itself be relied upon in findings of fact as rebutting the witness' direct testimony. However, upon leave from the Tribunal, the document can be admitted as evidence without a sponsoring witness if official notice is proper, or if in the Tribunal's view, the cross-examined witness is the proper sponsoring witness.

(l) The Tribunal will require individuals or groups with the same or similar interests in a proceeding to select a single representative to conduct their examination and cross-examination for them. However, if, within a settled group, the individual parties request to conduct separate questioning, the Tribunal may allow such, so long as the questioning is limited to the particular interests of the individual party and is not cumulative or repetitive of the questioning of other parties within the settled group.

§ 301.49 [Amended]

13. In newly redesignated § 301.49, paragraphs (e), (f), (g), (j), (k) and (l) are proposed to be removed, and paragraphs (h) and (i) are proposed to be redesignated (e) and (f), respectively.

§ 301.53 [Amended]

14. In newly redesignated § 301.53, paragraph (d) is proposed to be removed.

15. Section 301.63 is proposed to be revised as follows:

§ 301.63 Consideration of petition.

To allow time for parties to settle their differences regarding rate adjustments, the Tribunal may delay considering any petition before the expiration of 90 days from the start of the calendar year specified in § 301.61(b) or 90 days from the effective date of the Federal Communications Commission action mentioned in § 301.61(c). Similar petitions may be joined together by the Tribunal for the purpose of determining "significant interest", and the Tribunal may permit written comments or a hearing on pending petitions.

16. Section 301.64 is proposed to be revised as follows:

§ 301.64 Disposition of petition.

At the end of the 90-day period, if the Tribunal has not already done so, the Tribunal shall determine as expeditiously as possible if one or more petitioner's interest is "significant"; and shall publish in the **Federal Register** a notice of its determination and the reasons therefor, together with a notice of the commencement of proceedings if it has been determined to commence a proceeding. Any commencement notice shall, to the extent feasible, describe the general structure and schedule of the proceeding.

17. In § 301.66, paragraph (a) is proposed to be revised as follows:

§ 301.66 Publication of proposed rate determination.

(a) Following the conclusion of the hearings, the Tribunal may publish in the **Federal Register** a notice of its proposed findings and conclusions in the rate adjustment proceeding. The Tribunal shall afford all parties a reasonable opportunity to submit written comments on the proposed determination. The Tribunal may, if necessary, conduct additional hearings.

* * * * *

§ 301.70 [Amended]

18. In § 301.70, the section citation "17 U.S.C. 111(d)(5)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(4)" is proposed to be added in its place.

19. In § 301.74, paragraph (a) is proposed to be revised as follows:

§ 301.74 Publication of proposed royalty distribution determination.

(a) Following the conclusion of the hearings, the Tribunal may publish in the **Federal Register** a notice of its proposed findings and conclusions in the royalty distribution proceeding. The Tribunal shall afford all claimants a reasonable opportunity to submit written comments on the proposed determination. the Tribunal may, if necessary, conduct additional hearings.

* * * * *

20. Subpart H, consisting of §§ 301.80 through 301.83, is proposed to be added as follows:

Subpart H—Appeals of Tribunal Decisions

Sec.

Subpart H—Appeals of Tribunal Decisions

§ 301.80 Purpose.

The purpose of this subpart is to implement the provisions of Pub. L. 100–236, an amendment to Title 28 of the United States Code to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order

§ 301.81 Notice of petition for review of Tribunal decisions.

Immediately following the filing by a party of a petition for review of a Tribunal's decision, a copy of such petition for review shall be filed with the General Counsel of the Tribunal and shall include: the date of the relevant decision, the case name of the petition for review, the circuit court of appeals in which the petition for review is pending, the appellate docket number of the petition for review, and the date of filing by the court of appeals of the petition for review.

§ 301.82 Judicial Panel on Multidistrict Litigation.

(a) If, within ten days after issuance of a final Tribunal decision, the General Counsel receives notice of two or more petitions for review with respect to proceedings in at least two courts of appeals, the General Counsel shall, promptly after the expiration of the ten-day period, so notify the Judicial Panel on Multidistrict Litigation, according to Rules 20–23 of the Panel's Procedures.

(b) Upon notification from the Judicial Panel on Multidistrict Litigation that the Panel has consolidated the petitions for review in the court of appeals for the circuit that was randomly selected, the General Counsel shall promptly serve the Panel's consolidation order on all other parties in all petitions for review included in the Panel's consolidation order, and shall promptly submit a proof of that service to the Clerk of the Panel.

§ 301.83 Filing of proceeding records.

(a) In the case of two or more appeals filed within ten days after issuance of a final Tribunal decision, the General Counsel shall file the record of the proceeding in the court of appeals for the circuit named by the Judicial Panel on Multidistrict Litigation.

(b) In the case of fewer than two appeals filed within ten days after issuance of a final Tribunal decision, the General Counsel shall file the record of the proceeding in the court of appeals where the first appeal was filed.

PART 302—FILING OF CLAIMS TO CABLE ROYALTY FEES

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 302 as follows:

21 The authority citation for Part 302 is revised to read as follows:

Authority: 17 U.S.C 111(d)(4)(A)

§ 302.1 [Amended]

22. In § 302.1, the section citation "17 U.S.C. 111(d)(5)(A)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(4)(A)" is proposed to be added in its place.

§ 302.2 [Removed and Reserved]

23. Section 302.2 is proposed to be removed and reserved.

§ 302.3 [Removed and Reserved]

24. Section 302.3 is proposed to be removed and reserved.

§ 302.6 [Removed and Reserved]

25. Section 302.6 is proposed to be removed and reserved.

26. Section 302.7 (a) and (b) introductory text is proposed to be revised as follows:

§ 302.7 Filing of claims to cable royalty fees.

(a) During the month of July of each year, every person claiming to be entitled to compulsory license fees for secondary transmissions during the preceding calendar year shall file a claim to such fees in the office of the Copyright Royalty Tribunal. No royalty fees shall be distributed to copyright owners for secondary transmissions during the specified period unless such owner has filed a claim to such fees during the following calendar month of July For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require. A joint claim shall include a concise statement of the authorization for the filing of the joint claim.

(b) Claims shall include the following information:

* * * * *

27 Section 302.8 is proposed to be revised as follows:

§ 302.8 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed if:

(a) they are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of July, or

(b) they are properly addressed to the Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 and they are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

§ 302.10 [Amended]

28. In § 302.10, the section citation "17 U.S.C. 111(d)(5)(c)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(4)(C)" is proposed to be added in its place.

PART 305—CLAIMS TO PHONORECORD PLAYER (JUKEBOX) ROYALTY FEES

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 305 as follows:

29. The authority section for Part 305 continues to read as follows:

Authority: 17 U.S.C 116(c)(2).

30. Section 305.2 is proposed to be revised as follows:

§ 305.2 Time of filing.

During the month of January in each year every person claiming to be entitled to coin-operated phonorecord player fees for performances of nondramatic musical works during the preceding calendar shall file a claim with the Copyright Royalty Tribunal. No royalty fees shall be distributed to any person during the specified period unless such person has filed a claim to such fees during the following calendar month of January Claimants may file jointly or as a single claim. A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership or affiliate agreements, for purposes of this filing and fee distribution.

§ 305.3 [Amended]

31 In § 305.3, paragraph (c) is proposed to be removed.

32. Section 305.4 is proposed to be revised as follows:

§ 305.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the month of January, or

(b) They are properly addressed to the Copyright Royality Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC

20036 and they are deposited with sufficient postage with the United States Postal Service and bear a January U.S. postmark.

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR Part 308 as follows:

PART 308—ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

33. The authority citation for Part 308 continues to read as follows:

Authority: 17 U.S.C. 801(b)(2)(A) and (D).

§ 308.2 [Amended]

34. In paragraph (a) of § 308.2, the section citation "17 U.S.C. 111(d)(2)(B)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(1)(B)" is proposed to be added in its place, and in paragraph (b) of § 308.2, the section citation "17 U.S.C. 111(d)(2)(C) and (D)" is proposed to be removed, and the section citation "17 U.S.C. 111(d)(1)(C) and (D)" is proposed to be added in its place.

Mario F. Aguero,

Chairman.

Dated: October 26, 1988.

[FR Doc. 88-25088 Filed 10-28-88; 8:45am]

BILLING CODE 1410-09-M

VETERANS ADMINISTRATION

38 CFR Ch. 1

Agenda of Federal Regulations

AGENCY: Veterans Administration.

ACTION: Publication of agenda of regulations; correction.

SUMMARY: The Veterans Administration (VA) is correcting its Agenda of Regulations for one entry which appeared in the wrong section.

FOR FURTHER INFORMATION CONTACT: M'Liz McLendon, (202) 233-3770.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 24, 1988 (53 FR 42689) the VA published its Agenda of Regulations for all regulations under review, development or revision during the 12-month period from October 1988 to October 1989. One entry concerning Procedural Due Process (RIN 2900-AC54) was incorrectly published in the Completed section of the agenda (53 FR 42711). The VA hereby corrects the error and is republishing that entry in its entirety.

Dated: October 26, 1988.

C.G. Verenes,

Acting Chief, Directives Management Division.

VA **Final Rule Stage**

3397. PROCEDURAL DUE PROCESS

Legal Authority: 38 USC 210(c)

CFR Citation: 38 CFR 3.103; 38 CFR 3.105; 38 CFR 3.109; 38 CFR 3.110; 38 CFR 3.114

LEGAL DEADLINE: None.

ABSTRACT: These changes expand the procedural due process provided to beneficiaries, especially when benefits are proposed to be reduced or terminated. There is also a clarification of the effective date rule applicable to liberalizing laws or administrative issues.

TIMETABLE:

Action	Date	FR Cite
NPRM	9/28/88	53 FR 37797
NPRM Comment Period End	10/28/88	53 FR 37797
Final Action	00/00/00	

SMALL ENTITIES AFFECTED: None.

GOVERNMENT LEVELS AFFECTED: None.

AGENCY CONTACT: Robert M. White, Chief, Regulations Staff, Veterans Administration, Department of Veterans Benefits (211B), 810 Vermont Avenue, NW, Washington, DC 20420, 202-233-3005.

RIN: 2900-AC54.

[FR Doc. 88-25093 Filed 10-28-88; 8:45 am]

BILLING CODE 3194-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3469-5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On September 8, 1988 (53 FR 34782 and 53 FR 34784), EPA proposed approval of revisions submitted by the Commonwealth of Massachusetts for Boston Whaler, Inc.'s Norwell and Rockland facilities. On October 7, 1988, Boston Whaler, Inc., requested an extension of the public comment period. EPA has evaluated this request and is hereby granting a thirty (30) day extension of the public comment period.

DATES: Comments should be received on or before November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu; (617) 565-3250; FTS 835-3250.

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

Date: October 19, 1988.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 88-25080 Filed 10-28-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3469-8]

Designation of Areas for Air Quality Planning Purposes; Ohio

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to disapprove the State of Ohio's June 15, 1987, request to redesignate the air quality status of 31 counties for total suspended particulates (TSP). USEPA has determined that the redesignation request was incomplete for these counties because of a lack of sufficient technical support. The purpose of this notice is to discuss the additional data which would be needed to satisfy the requirements of USEPA's Redesignation Policy and to solicit comments on USEPA's proposed action.

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 nominal diameter of 10 micrometers of less (PM10). The July 1, 1987, preamble to the PM10 implementation regulation describes USEPA's transition policy regarding TSP redesignations (52 FR 24672, 24682). The transition policy states that redesignations will continue to be reviewed for compliance with USEPA's current redesignation policies, until such time as the State has an approved PM10 SIP. Ohio does not have an approved PM10 SIP.

DATE: Comments must be received by November 30, 1988.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

Written Comments should be sent 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: Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status for each pollutant for all areas within the State. The Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962), and made necessary amendments in the **Federal Register** on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

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 nominal diameter of 10 micrometers or less (PM10). However, USEPA will continue to process redesignations of areas from nonattainment or unclassifiable for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, preamble to the PM10 implementation regulation describes USEPA's transition policy regarding TSP redesignations (52 FR 24672, 24682). The transition policy states that redesignations will continue to be reviewed for compliance with USEPA's redesignation policies until such time as the State has an approved PM10 SIP. Ohio does not have an approved PM10 SIP. USEPA's redesignation policies are discussed most recently in a September 30, 1985, memorandum from Gerald Emision, Director, Office of Air Quality Planning and Standards (OAQPS), to the Regional Air Division Directors, entitled "Total Suspended Particulate (TSP) Redesignations". USEPA's criteria relevant to TSP redesignations are summarized as follows:

Eight consecutive quarters of the most recent, quality assured ambient air quality data must indicate no violation of the TSP National Ambient Air Quality Standard (NAAQS). The monitors must be placed at points of expected maximum TSP impact, and the monitoring network must be extensive enough to produce fully representative data. If monitoring data are not representative, dispersion modeling must be used to determine the impact of a source.

Improvements in air quality must be attributable to federally enforceable and permanent emission reductions from a fully approved and implemented State Implementation Plan (SIP) control strategy. An exception to the requirement for a fully approved and implemented SIP control strategy can be made if the physical circumstances and long-term economic factors are such that the approved and implemented measures have the same weight as a fully approved SIP control strategy for the purpose of demonstrating attainment. For example, the permanent closing of the major emitting sources, road paving to eliminate fugitive emissions, or other irreversible actions can be such measures.

Emission reductions and the resultant impact on air quality cannot be temporary or the result of an economic downturn. It must be highly unlikely that emission rates will increase at units operating below their allowable emission rates or that any increase will result in a violation of the NAAQS.

Dispersion techniques cannot be responsible for the improvement in air quality. Sources in the nonattainment area must be reviewed for consistency with the requirements of USEPA's July 8, 1987 (50 FR 27892), revised stack height regulations.

At the present time there are 31 counties in Ohio that are designated either partial or full county nonattainment of one or both of the TSP NAAQS (40 CFR 81.336). On June 15, 1987, the State of Ohio submitted a request to revise the TSP attainment status designations for the 31 counties to attainment/unclassifiable. Following is a listing of the 31 counties and a summary of their nonattainment status.

County	Summary of nonattainment status
Belmont	Portions of the county—primary and secondary nonattainment.
Butler	City of Middletown—secondary nonattainment.
Clark	Portion of the county—secondary nonattainment.
Columbiana	Portions of the county—primary and secondary nonattainment.
Cuyohoga	Portions of the county—primary and secondary nonattainment.
Franklin	Portions of the county—primary and secondary nonattainment.
Gallia	Entire county—secondary nonattainment.
Hamilton	Portion of the county—primary nonattainment.
Jackson	Entire county—secondary nonattainment.
Jefferson	Portions of the county—primary and secondary nonattainment.
Lake	Portions of the county—primary and secondary nonattainment.
Lawrence	Cities of Ironton and Coal Grove and Upper and Perry Townships—secondary nonattainment.
Logan	Entire county—primary nonattainment.
Lorain	Portions of the county—primary and secondary nonattainment.
Lucas	Cities of Toledo and Oregon—secondary nonattainment.
Mahoning	Portions of the county—primary and secondary nonattainment.
Medina	Entire county—secondary nonattainment.
Miami	Portions of the county—primary and secondary nonattainment.
Monroe	Portions of the county—primary and secondary nonattainment.
Montgomery	Portions of the county—primary and secondary nonattainment.
Muskingum	Entire county—secondary nonattainment.
Richland	Entire county—primary nonattainment.
Sandusky	Entire county—primary nonattainment.
Scioto	Portions of the county—primary and secondary nonattainment.
Seneca	City of Bettsville and Liberty Township north of the Penn Central Railroad—secondary nonattainment.
Stark	Portions of the county—primary and secondary nonattainment.
Summit	Portions of the county—primary and secondary nonattainment.
Trumbull	Portions of the county—primary and secondary nonattainment.
Tuscarawas	Entire county—primary nonattainment.
Washington	Entire county—primary nonattainment.
Wyandot	Entire county—primary nonattainment.

For a detailed description of the specific portions of the counties that are classified nonattainment, we refer you to the Ohio TSP listing contained in 40 CFR 81.336.

USEPA's Evaluation of Technical Support Data and Proposed Action

To support its request that the primary and secondary nonattainment areas in the above 31 counties be redesignated to attainment/unclassifiable, the State is citing USEPA's July 1, 1987, promulgation of the PM10 standard. Specifically, it is Ohio position that "upon promulgation of the PM10 standard, the TSP NAAQS ceased to exist. Since there are no TSP standards, there cannot be nonattainment areas for TSP, and the corresponding nonattainment designations are also no longer appropriate." No further technical support was provided.

USEPA acknowledges that with the promulgation of the PM10 standard, the TSP NAAQS no longer exists. TSP

remains regulated under the Act, however, because the statutory prevention of significant deterioration increments for particulate matter are still expressed in terms of TSP. Thus, for TSP, the prevention of significant deterioration requirements will continue to apply in any area which does not have a section 107 nonattainment designation for TSP. (52 FR 24683, col. 3.)

In the July 1, 1987 preamble, USEPA also stated that it would continue to accept requests by the States to revise area designations from nonattainment to attainment or unclassifiable. it noted that "[t]he requests will continue to be reviewed during the transition period [prior to approval of the state's PM10 control strategy] for compliance with USEPA's redesignation policies as issued in memoranda from the Director of Air Quality Planning and Standards [on] April 21, 1983, and September 30, 1985." (52 FR 24682, col. 1.) The Agency also encouraged states to request redesignation of TSP nonattainment areas to unclassifiable at the time they submit their PM10 control strategies to USEPA. Once USEPA has approved a control strategy as sufficient to attain and maintain the PM10 NAAQS, it will also approve such a redesignation.

USEPA has not approved (nor has Ohio submitted) PM10 control strategies for the 31 counties at issue. Area redesignations for TSP therefore must be reviewed during this transition period according to the policies in the redesignation memoranda discussed above. Since Ohio has not provided any of the required technical support data required by these policies, USEPA cannot approve the redesignations for the 31 counties from nonattainment to attainment or unclassifiable at this time.

USEPA's Proposed Action

Disapproval. The State of Ohio's redesignation request for 31 counties is not approvable because the State did not provide the necessary technical support data.

All interested parties are invited to submit comments on this proposed action notice. USEPA will consider all comments received within 30 days of publication of this notice.

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

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

Authority: 42 U.S.C. 7401–7642.

Dated: December 29, 1987.

Frank M. Covington,

Acting Regional Administrator.

Editorial note.—This document was received by the Office of the Federal Register October 26, 1988.

[FR Doc. 88–25081 Filed 10–28–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 390

[Docket No. R–120]

RIN 2133–AA65

Capital Construction Fund

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would incorporate in existing regulations the new requirements imposed on Capital Construction Fund (CCF) program participants by the Tax Reform Act of 1986. In addition, this proposed rule would clarify the constraints on permissible operations for qualified CCF vessels, and would change the financial reporting and "Buy American" requirements, respectively.

DATES:

Proposed Effective Date: The regulations are proposed to be effective for open taxable years beginning after December 31, 1986.

Date for Comments: Written comments must be received by December 15, 1988.

ADDRESS: Submit comments to James E. Saari, Secretary, Maritime Administration Room 7300, 400 Seventh Street SW., Washington, DC 20590. The Maritime Administration requests that commenters submit five copies of their comments.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Chief, Division of Capital Assets Management, 400 Seventh Street SW., Washington, DC 20590, Tel: (202) 366–1905.

SUPPLEMENTARY INFORMATION:

Authority for CCF Program and Regulatory Background

Under section 607 of the Merchant Marine Act, 1936 (Act), as amended, 46 App. U.S.C. 1177, an owner or lessor of an "eligible" vessel may, pursuant to an agreement with the United States, establish a CCF. Generally, a vessel is eligible if it is constructed or reconstructed in the United States, documented under the laws of the United States and operated in the foreign or domestic commerce of the United States. The owner or lessor may then deposit into the CCF certain amounts representing taxable income from such eligible vessel, depreciation on such vessel, net proceeds from the disposition of such vessel, and earnings, on amounts held in the CCF.

Taxation is deferred on amounts deposited into the CCF. Taxation is also deferred on amounts withdrawn from the CCF to the extent they are used to purchase, construct, reconstruct or retire indebtedness on a "qualified" vessel. Generally, a vessel is qualified if it is constructed or reconstructed in the United States, documented under the laws of the United States, and operated in the United States foreign, Great Lakes or noncontiguous domestic trade.

The basis of the qualified vessel is reduced to reflect the amount of tax-deferred funds withdrawn from the CCF to purchase, constuct, reconstruct or retire indebtedness on such vessel.

The provisions of section 607 of the Act are implemented in the regulations contained in 46 CFR Parts 390 and 391. The regulations in 46 CFR Part 390, "Capital Construction Fund," govern the administration of the CCF authorized by section 607 of the Act. The regulations in 46 CFR Part 391, "Federal Income Tax Aspects of the Capital Construction Fund," provide rules for determining the income tax liability of any party to a CCF agreement with the United States, and are prescribed and administered jointly by the Secretaries of Transportation and Treasury. These regulations are generally referred to as "joint regulations." This rulemaking would reflect changes in the regulations in 46 CFR Part 390 to conform to provisions in the Tax Reform Act of 1986, (Pub. L. 99–514) as described hereinafter. The Maritime Administration and the Internal Revenue Service will publish a separate proposed joint rule making document amending 46 CFR Part 391, that is under review.

Departmental Reports to Treasury

Under existing regulations, there is no requirement to report to the Secretary of the Treasury. Under proposed 46 CFR 390.14, which reflects section 261(d) of the Tax Reform Act of 1986, the Secretary of Transportation is required to make an annual report to the Secretary of the Treasury regarding the establishment, maintenance, and termination of capital construction funds. The report would also include a determination as to whether a fundholder has failed to fulfill a

substantial obligation for vessel construction, reconstruction or acquisition under a CCF agreement.

Use of CCF for Lease Payments

Under existing regulations, at 46 CFR 390.5 (c), the acquisition of a qualified vessel is not interpreted to include the lease of a qualified vessel. The legislative history of the Tax Reform Act of 1986 indicates Congressional intent to consider leasehire payments from the CCF to be considered qualified withdrawals, if such payments are used for the acquisition of a qualified vessel through lease for a period of five years or more. The Maritime Administration is considering proposing to the Internal Revenue Service that the joint proposed regulations treat the tax aspects for qualified withdrawals for leasehire payments as follows:

The amount withdrawn from the fund for the lease payment by the lessee would be considered a qualified withdrawal to the extent that it does not exceed the amount of the lease payment which is allocated to the reduction of the obligation (excluding the amount allocated to interest expense) capitalizable pursuant to the provisions for capital leases under Statement of Financial Accounting Standards No.

The amount of the lease payment equal to the qualified withdrawal would be deductible as an expense from the lessee's taxable income. The lessee would reduce the basis in an owned vessel to the extent of such withdrawal and, in the event there is insufficient basis to reduce, the difference between the amount of the withdrawal and the reduction in basis shall be considered a nonqualified withdrawal.

The Maritime Administration requests specific comments on the tax aspects of the use of the capital construction funds for lease payments, including the application of the alternative minimum tax to capital construction funds (section 56 (c) (2) of the Internal Revenue Code).

Impermissible Operations for Qualified Agreement Vessels

The present regulatory provisions at 46 CFR 390.5, defining qualified agreement vessels, do not identify and define or and policies of the Act, these regulations would be amended to specifically define and describe impermissible operations for qualified agreement vessels. Examples of impermissible operations are the use of barges as docks and ramps and the positioning of vessels in support of domestic operations prohibited by section 607 of the Act.

Liquidated Damages

The existing regulations, at 46 CFR 390.12, provide for the payment of liquidated damages for each day that a qualified agreement vessel is in violation of geographic trading restrictions set forth in the Act and in the existing regulations at 46 CFR 390.5. However, they do not set out limitations on availability of this option. The proposed rule provides that the payment of liquidated damages would only apply to those situations where a fundholder may, because of operating necessity, operate its vessels impermissibly on a strictly incidental basis.

Buy American Requirement

The existing regulation at 46 CFR 390.9(c)(2) has a "Buy American" requirement which provides that, so far as practicable, qualified withdrawals must be for items produced in the United States. The cost of a foreign component of a vessel cannot be allowed as a qualified withdrawal unless MARAD approves a waiver. MARAD will not approve the waiver unless the article, material or supply is not customarily produced in the United States; or, with respect to a component that is not integral to the hull or superstructure, and any material used in its construction, compliance with the U.S. origin requirement would unreasonably delay completion of a vessel.

The proposed rule would eliminate the "Buy American" requirement and provides that a vessel is to be considered of United States construction if it is built entirely in a U.S. shipyard, all components of the hull and superstructure are fabricated in the United States, and the vessel is assembled entirely in the United States. Other components may be of foreign manufacture without need for waiver by MARAD. This policy is consistent with that which is applied under its obligation guarantee (Title XI) program, set forth at 46 CFR 298.11.

E.O.—12291 Statutory and DOT Requirements

The Maritime Administrator has determined that this regulation is not a major rule, as defined in E.O. 12291, and is nonsignificant under DOT regulatory policies and procedures (49 FR 11034; February 26, 1979). This rule would primarily affect government agencies and ship operators that do not meet the criteria established for small business entities under existing Small Business Administration criteria (13 CFR 121.3). Therefore, the Maritime Administrator certifies that this rule, if finalized, would not exert a significant economic impact on a substantial number of small entities.

This rulemaking implements provisions in the Tax Reform Act of 1986 that amend the Act with respect to administration of a CCF by MARAD. There appears to be little likelihood that these changes will have a significant economic impact on operators. Accordingly, the economic impact of this notice of proposed rulemaking has been found to be minimal so that further evaluation is unnecessary. This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rulemaking does not have a federalism implication that would warrant the preparation of a Federal Assessment. It contains no new reporting requirements subject to provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 390

Maritime administration, Maritime carriers, Reporting requirements.

For the reasons set out in the preamble, it is proposed to amend 46 CFR Par 390, as follows.

PART 390—[AMENDED]

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

Authority: Sections 204(b) and 607, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b) and 1177); Pub. L. 99-514; 49 CFR 1.66.

2. Section 390.5(c) is amended by adding the following paragraphs (6) and (7).

§ 390.5 [Amended]

* * * * *

(c) * * *

(6) *Impermissible Operations.* Impermissible operations for qualified agreement vessels include:

(i) Positioning vessels in support of domestic operations prohibited by section 607 of the Act;

(ii) Use of barges as docks and ramps;

(iii) Foreign-to-foreign trade, consisting of voyages originating and ending in foreign ports, with no intermediate domestic cargo operations, or of trade to and from U.S. oil rigs in international waters, except in the case of the carrage of liquid or dry bulk cargoes when the carrier has demonstrated to the Administrator—

(A) The need for such foreign-to-foreign shipments (as required by section 905 of the Act and § 390.5(c)(3)(iii) of this part); and

(B) That the proposed cargo would qualify as liquid or dry bulk cargo; and

(iv) Tug assist work in a contiguous domestic port except for the lightering or shifting of a vessel at the end or beginning of a noncontiguous domestic or foreign voyage).

(7) *United States Construction.* An agreement vessel is considered to be of United States construction if:

(i) It is built entirely in a shipyard or shipyards of the United States within the meaning of section 505 of the Act;

(ii) All components of the hull and superstructure are fabricated in the United States; and

(iii) The vessel is assembled entirely in the United States.

§ 390.6 [Amended]

3. Section 390.6 is amended as follows:

(a) In paragraph (b)(2) by striking "semi-annually and;" and

(b) In paragraph (b)(4), by striking the first sentence.

§ 390.9 [Amended]

4. Section 390.9 is amended as follows:

(a) In paragraph (b)(1)(i), by adding at the end of the paragraph the following sentence: "The term 'acquisition of a qualified agreement vessel' shall include the lease of a qualified agreement vessel for a period of five years or more."

(b) By removing paragraph (c)(2) in its entirety and renumbering paragraphs (c)(3) through (c)(5) as (c)(2) through (c)(4).

§ 390.12 [Amended]

5. Section 390.12(a)(1) is amended by adding the following two sentences at the end: "This provision is not intended to permit a fundholder to operate its qualified agreement vessels on a continuing basis in impermissible trades. It is intended only to apply to those situations where a fundholder may, because of operating necessity, operate its vessels in impermissible trades on a strictly incidental basis."

6. By adding a new § 390.14, to read as follows:

§ 390.14 Departmental Reports and Certification.

(a) *In general.* For each calendar year, the Secretary of Transportation shall provide to the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds under the Secretary of Transportation's jurisdiction.

(b) *Contents of reports.* Each report shall set forth the name and taxpayer identification number of each person.

(1) Establishing a capital construction fund during such calendar year;

(2) Maintaining a capital construction fund as of the last day of such calendar year;

(3) Terminating a capital construction fund during such calendar year;

(4) Making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(5) With respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

Date: October 26, 1988.

By Order of the Maritime Administrator.

Approved:

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 88-25110 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-268; DA 88-1633]

Broadcast Service; Advanced Television System and Their Impact on the Existing Television Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision and further notice of inquiry; extension of time for filling comments.

SUMMARY: This Order extends the time for filing comments on the *Tentative Decision and further Notice of Inquiry* in MM Docket No. 87-268. (*See* 53 FR 38747, October 3, 1988.) Comments were originally to be filed on or before October 31, 1988, and reply comments were due by December 1, 1988. These dates have been extended due to the complex nature of the issues raised in this proceeding, and the importance of the advanced television proceeding to the broadcast industry, other media, and to consumers.

DATE: Comments are now due November 30, 1988, and reply comments are due January 9, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David R. Siddall, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-25193 Filed 10-28-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

Pacific Halibut of the Bering Sea

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

ACTION: Notice of availability of a draft environmental assessment and regulatory impact review (EA/RIR) and request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has prepared a draft EA/RIR that assesses potential effects of possible regulatory changes affecting the Pacific halibut fishery in the Bering Sea. Public comment is especially requested on environmental quality issues relating to the regulatory changes considered in the draft EA/RIR. Copies of the draft EA/RIR may be obtained from the Council at the address below. The purpose of this notice is to solicit public comments on the draft EA/RIR.

DATE: Comments on the draft EA/RIR are invited until November 30, 1988.

ADDRESSES: Comments should be addressed to James W. Brooks, Acting Director, Alaska Region, National Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. Copies of the draft EA/RIR may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, telephone 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, telelphone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Pacific halibut fishery is regulated under authority of the International Pacific Halibut Commission (IPHC) established by convention between the U.S. and Canada. The Northern Pacific Halibut Act of 1982 (Halibut Act) gives effect to convention amendments made in 1979 and provides the Council with authority to develop regulations governing halibut fishing off Alaska which are in addition to, but not in conflict with, regulations adopted by the IPHC. Such regulations may only be implemented with approval

of the Secretary of Commerce (Secretary).

In July 1988, the Council solicited regulatory amendment proposals for the 1989 halibut fishing season. The Council received and reviewed 21 proposals. At its meeting in September 1988, the Council reviewed the recommendations of its Halibut Management Team and Halibut Regulatory Amendment Advisory Group and decided to consider only two of the 21 proposals. These two concern Regulatory Areas 4B (western Aleutians including Atka Island) and 4C (Pribilof Islands).

Specifically, the allocative measures being considered by the Council for Regulatory Areas 4B and 4C include establishment of a series of one- and two-day fishing periods in Area 4B during June and July within a catch limit of 500,000 pounds, and extension of the 10,000 pound trip limit in Area 4C until 80 percent of the catch limit for that area has been harvested.

The Council's Halibut Management Team has prepared a draft EA/RIR that assesses the potential environmental and economic effects of the regulatory alternatives under consideration. Copies of this draft EA/RIR may be requested from the Council at the address listed above. Comments on how any of the alternatives may affect the human environment are especially requested.

The Council intends to make a final decision on these alternatives at its next scheduled meeting, December 5–9, 1988. If necessary, a proposed rule implementing the Council's decision would be published as soon as practicable after that date with an additional opportunity for public comment. Any resulting final rule, if approved by the Secretary, would be in effect before the beginning of the 1989 halibut fishing season.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: October 26, 1988.

Alan Dean Parsons,

Acting Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–25130 Filed 10–28–88; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 210
Monday, October 31, 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 COMMERCE

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

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

Agency: Bureau of Export Administration.
Title: Reexports into COCOM Participating Countries.
Form Number: Agency—EAR 774.2(K)(3); OMB—N/A.
Type of Request: New Collection/ Expedited Review Requested—OMB clearance requested 10 days after receipt of the information collection for review.
Burden: 2,000 respondents; 533 reporting/recordkeeping hours—Average burden is 16 minutes per respondent.
Needs and Uses: Reexports of controlled items among COCOM countries and Switzerland will no longer require "pre-approval" from BXA. However, foreign parties will be required to notify BXA when an item has been reexported. The notification shall identify: (1) The reexporter and the ultimate consignee; (2) the type (including the ECCN, if known), quantity and value of the commodity; (3) the date of the reexport; and (4) the original U.S. export license number under which the commodity was exported from the U.S. (if known) and the identify of the U.S. party from whom the reexporter received the goods. The information collected will be used to ensure that U.S.-origin high technology commodities will not be obtained by our adversaries.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Francine Picoult, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC.

Dated: October 26, 1988.

Linda Engelmeier,
Management Analyst, Office of Management and Organization.

[FR Doc. 88-25113 Filed 10-28-88; 8:45 am]
BILLING CODE 3510-CW-M

Export Administration

[Docket No. 8106-01]

Actions Affecting Export Privileges; Richard G. Carter

Summary

Pursuant to the September 7, 1988 Decision and Order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, Richard G. Carter, with an address at 3300 Medina Court, Las Vegas, Nevada 89121, is denied for a period of (3) three years from the date hereof, 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 (15 CFR Parts 368 and 369).

Order

On September 7, 1988, the Administrative Law Judge (ALJ) entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The basis of the ALJ's recommended Decision and Order is an agreement of the parties concerning not only the period of denial, but certain language to be contained in the final order. The ALJ altered a portion of the agreed upon language, to which the Department has taken exception. Having examinerd the record, and based on the facts in this case, I affirm the recommended Decision and Order of the ALJ, with the following modification in accordance with the agreement of the parties (the modification is underlined): On page four of the recommended Decision and Order, the last sentence of paragraph II should read,

Such denial of export privileges shall extend *only to those commodities and technical data* which are subject to the act in the regulations.

This constitutes final Agency action in this matter.

Dated: October 6, 1988.

Paul Freedenberg,
Under Secretary for the Bureau of Export Administration.

[Docket No. 8106-01]

Preliminary Statement

In the Matter of: Richard G. Carter, respondent.

Appearance for Respondent: Richard G. Carter, 3330 Medina Court, Las Vegas, Nevada 89121.

Appearance for Agency: Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, Rm. 3329, U.S. Department of Commerce, 14th & Constitution Aves., NW., Washington, DC 20230.

This proceeding against Respondent Richard G. Carter began with the issuance of a charging letter, dated April 28, 1988, by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat 120 (July 12, 1985) (the Act), and under the authority of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1988)) (the Regulations). The letter charged that between on or about April 2, 1983 and on or about May 14, 1983, Respondent, in his capacity as vice-president of Tekys, Inc., directed the activities of Tekys in exporting or causing to be exported, from the United States to the Netherlands, five separate shipments of U.S.-origin electronic communications equipment with

knowledge that such equipment was intended to be, and in fact was, reexported to Libya without obtaining the required validated export licenses, and in connection with four of the shipments, the Respondent made or caused to be made false representations of material facts on Shipper's Export Declarations. The Agency alleges that these actions violated §§ 387.5 and 387.6 of the Regulations.

To settle this matter, Respondent and Agency, pursuant to § 388.17 of the Regulations, have entered into a consent agreement in which the Respondent admits that the facts as stated in the Charging Letter are true and agrees to an imposition of a denial of U.S. export privileges for a period of three years. The undersigned approves the terms of the consent agreement. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations, it is ordered that:

Order

I. For a period of three years from the date of the final Agency action, Respondent Richard G. Carter, 3330 Medina Court, Las Vagas, Nevada 89121, 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 Rugulations.

II. Participation prohibited in any such transaction, either in the United States or aboard, 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 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 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 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)).

Date: September 7, 1988.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 88-25058 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 33-88]

Foreign-Trade Zone 15, Kansas City, MO; Application for Subzone; Kawasaki Small Engine Plant, Nodaway County, MO

An apoplication has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc. (KCFTZ), grantee of FTZ 15, requesting special-purpose subzone status for the small engine manufacturing plant of Kawasaki Motors Manufacturing Corp., U.S.A. (KMM) (a subsidiary of Kawasaki Heavy Industries, Ltd., Japan), located in Nodaway County, Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 21, 1988.

The KMM plant (114 acres) is located on U.S. Highway 71 north of Maryville, in Nodaway County, Missouri, some 95 miles northwest of Kansas City. The facility (known as the Maryville plant) will be used to produce two types of small engines: Industrial engines for construction, farm and garden equipment (18cc–296cc); and engines for motorcycles, jetskis, and all-terrain vehicles (150cc–1500cc). The industrial engines will primarily be sold to equipment makers, and the motorcycle, jetski and all-terrain vehicle engines will be shipped to Kawasaki's Lincoln, Nebraska, plant (FTZ Subzone 59A). The Applicant indicates that the engines made at the Maryville plant will displace engines imported from Japan. At the outset, all of the components used in the assembly process will be sourced abroad, including blocks, heads, crankshifts, connecting rods, ball bearings, springs, metal fasterners, guages and electrical parts. KMM estimates that 70 percent of the parts will be sourced domestically within four years.

Zone procedures would exempt KMM from Customs duty payments on foreign materials used in its exports (application indicates 35% of production). On domestic sales, the company would be able to choose the same finished product duty rate that applies to the completed engines (0.0–4.2%). The rates on materials and components range from 0.2 to 11.0 percent. The applicant indicates that the savings would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee

has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Theodore Galantowicz, District Director, U.S. Customs Service, North Central Region, 7911 Forsythe Boulevard, Suite 625, St. Louis, Missouri 63105; and Colonel John Atkinson, District Engineer, U.S. Army Engineer District Kansas City, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106–2896.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 12, 1988.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Room 635, 601 East 12th Street, Kansas City, MO 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: October 24, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–25118 Filed 10–28–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

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

AGENCY: International Trade Administration, Import Administration, Department of 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 November 30, 1988, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Barbed Wire and Barbless Fencing Wire (A-357-405)	11/01/87-10/31/88
Argentina: Carbon Steel Wire Rods (A-357-007)	11/01/87-10/31/88
Canada: Choline Chloride (A-122-016)	01/09/88-10/31/88
Japan: Bicycle Speedometers (A-588-038)	11/01/87-10/31/88
Japan: Titanium Sponge (A-588-020)	11/01/87-10/31/88
Republic of Singapore: Rectangular Pipes and Tubes (A-559-502)	11/01/87-10/31/88
West Germany: Drycleaning Machinery (A-428-037)	11/01/87-10/31/88
Suspended Investigation	
Japan: Certain Small Motors (A-588-090)	11/01/87-10/31/88
Countervailing Duty Proceeding	
Argentina: Oil Country Tubular Goods (C-357-403)	01/01/87-12/31/87
Argentina: Woolen Garments (C-357-048)	01/01/87-12/31/87
Peru: Deformed Steel Concrete Reinforcing Bars (C-333-502)	01/01/87-12/31/87
Republic of Singapore: Certain Refrigeration Compressors (C-559-001)	04/01/87-03/31/88

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 November 30, 1988.

If the Department does not receive by November 30, 1988 a request for review 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.

Richard Moreland,

Acting Deputy Assistant Secretary for Compliance.

Date: October 24, 1988.

[FR Doc. 88–25117 Filed 10–28–88; 8:45 am]

BILLING CODE 3510–DS–M

[C–355–001]

Leather Wearing Apparel From Uruguay; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Uruguay. We preliminarily determine the net subsidy to be 1.27 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.93 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44325) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Uruguay (47 FR 31032, July 16, 1982). On July 30 and July 31, 1986, respectively, the Amalgamated Clothing and Textile Workers Union, AFL–CIO, a domestic interested party, and the Government of Uruguay requested in accordance with 19 CFR 355.10 an administrative review of this order. We published the initiation on August 26, 1986 (51 FR 30259). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized Tariff System ("HTS") item numbers with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized Tariff System schedules is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Uruguayan leather wearing apparel and parts and pieces thereof. Such merchandise is currently classifiable under TSUSA item numbers 791.7620, 791.7640 and 791.7660. These products are currently classifiable under HTS item numbers 4203.10.40.30, 4203.10.40.60 and 4203.10.40.90. We invite comments from all interested parties on these HTS classifications. The review covers the period January 1, 1984 through December 31, 1985 and four programs.

Analysis of Programs

(1) Export Tax Refunds ("ETRs")

On July 25, 1983, the Government of Uruguay instituted a system of indirect tax refunds on exports of leather wearing apparel (Decree 289/983) for all shipments of the merchandise exported on or after January 1, 1983. Until May 24, 1984, the amounts of these refunds, which are issued in the form of tax certificates, ranged from 1.7 to 2.9 percent of the f.o.b., value of the merchandise, depending on the type of leather used in the garment. The Government of Uruguay suspended this program from May 25, 1984 (Decree 200/984) until July 10, 1985, when it was reinstated with the same or slightly lower (1.7 to 2.6 percent) refund rates (Decree 309/985).

In our last review, we established the requisite linkage between the payment of ETRs and the incidence of indirect taxes. In this review, we verified that the total indirect tax incidence of leather wearing apparel exports to the United States was higher than the rebate rates. Accordingly, we preliminarily determine that there were no overrebates under this program during the review period.

(2) Bonification Payments

Bonification payments are export rebates of 22 percent of the value of the processed wool portion of the leather wearing apparel. The Uruguayan government made such payments on eligible shipments to the United States in both 1984 and 1985. Because these payments are limited to exporters and not linked to the payment of indirect taxes, we preliminarily determine that this program confers a subsidy.

Because these payments can be tied to specific shipments, we calculated the benefit by dividing the amount received on U.S. shipments in each year by the total value of Uruguayan exports of this merchandise to the United States in that year. On this basis, we preliminarily determine the benefit from this program to be 1.25 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.92 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

(3) Uncollected Social Security Taxes

On May 11, 1982, the Government of Uruguay notified the Department that it had ceased its efforts to collect social security taxes that the leather wearing apparel industry had not paid in 1980.

Because the Government of Uruguay was not able to collect these taxes, we consider the uncollected taxes to be a grant given on the date the government officially declared the taxes uncollectable. We consider the amount of the grant to be the total amount of the uncollected taxes plus the interest which would have accrued from June 16, 1981 (the date on which the Uruguayan government agreed to eliminate all benefits on leather wearing apparel exports to the United States) to May 11, 1982. We used as our benchmark interest rate the prime rate available in Uruguay in 1981.

To calculate the benefit, we used a declining balance methodology. We allocated the grant over 11 years, the average useful life of assets in the leather wearing apparel industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the short-term 1982 interest rate, as published by the Central Bank of Uruguay, because we have no information on long-term interest rates or on the weighted cost of capital in the leather wearing apparel industry for that year. On this basis, we preliminarily determine the benefit from this program to be 0.02 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.01 percent *ad valorem* for the 1985 period.

(4) Preferential Export Financing

Central Bank Circular No. 1.229 of July 5, 1985, instituted a system of short-term preferential rate loans for "non-traditional" exports. Leather wearing apparel is considered a non-traditional export. However, Article 3 of Decree 309/985 of July 10, 1985 (the Decree which reinstituted the ETRs), prohibited these loans on certain specified exports, including leather wearing apparel. In addition, we found no evidence of use of this program by any of the leather wearing apparel exporters we verified.

Accordingly, we preliminarily determine that this program was not used by Uruguayan leather wearing apparel exporters during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 1.27 percent *ad valorem* for shipments of Uruguayan leather wearing apparel exported to the United States for the period January 1, 1984 through December 31, 1984, and 0.93 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

The Department intends to instruct the Customs Service to assess countervailing duties of 1.27 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984, and 0.93 percent of the f.o.b. invoice price for all shipments exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30

days from the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: October 25, 1988.

Jan W. Mares,

Assistant Secretary, Import Administration.

[FR Doc. 88-25116 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Bering Sea/Aleutian Islands Groundfish Plan Team will convene a public meeting, November 7, 1988, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Room 2143, Building 4, 7600 Sand Point Way, NE., Seattle, WA, to prepare its final Resource Assessment Document, recommend acceptable biological catches and bycatch rates for 1989 fisheries, and review groundfish amendment proposals. The public meeting will adjourn on November 10.

For further information contact Deby Lloyd, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: October 26, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25131 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The November 1, 1988, public meeting of the Pacific Fishery Management Council's Groundfish Fishery Management Plan Rewrite Oversight Group as published in the **Federal Register** (53 FR 41223, October 20, 1988) has been cancelled. Information regarding rescheduling, if any, will be published at a later date.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW., Fist Avenue, Portland, OR 97201; telephone: (5093) 221-6352.

Date: October 26, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25133 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting, November 16, 1988, at 1 p.m., of the King and Spanish Mackeral Advisory Panel at the Council's Headquarters (addressed below). The advisory panel will discuss proposed Mackeral Amendment #3, a prohibition on use of purse seines and run around gillnets for the Atlantic migratory group of king mackeral and a prohibition on use of drift gillnets for all coastal migratory pelagics (king, and Spanish mackeral, cobia, cero mackeral, little tunny, dolphin, and bluefish in the Gulf of Mexico). The panel also will discuss proposed Mackeral Amendment #4 which would reallocate the division of the Atlantic migratory group of Spanish mackeral equally between recreational and commercial user groups. The panel will review comments received during public hearings regarding Mackeral Amendments #3 and #4 held during the last two weeks of October. Finally, the panel will discuss items to be included in Mackeral Amendment #5. The public meeting will adjourn on November 17 at noon. A detailed agenda will be available to the public on or about November 3, 1988.

For further information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: October 26, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25132 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce

The Western Pacific Fishery Management Council's advisory bodies will convene public meetings as follows:

Precious Corals Plan Monitoring Team—will convene a public meeting on November 4, 1988, at 9:30 a.m., at the Honolulu Laboratory, National Marine Fisheries Service (NMFS), 2570 Dole Street, Honolulu, HI, to discuss the fishery management plan (FMP) for precious corals in the Western Pacific region and review research, data, and industry needs for the fishery. The Team also will discuss data collection requirements that should accompany experimental fishing permits (EFPs), observers on vessels fishing under EFPs and, if required, the preparation and training necessary; discuss any EFPs forwarded by the NMFS Regional Director, as well as other Team business.

Bottomfish Advisory Review Board—will convene a public meeting on November 10, 1988, at 1 p.m., at the NMFS Honolulu Laboratory (address above), to introduce Board members, distribute the 1986 and 1987 bottomfish annual reports and Amendment #2 to the Bottomfish FMP, review Board tasks in evaluating the Northwestern Hawaiian Islands bottomfish limited entry program, i.e. recommending to the Council when Ho'omalu zone bottomfish stocks are able to support additional fishing effort, and evaluating equivalency of fishing power between vessel fishing, or intended for fishing in the Ho'omalu zone; review report on Hawaii's bottomfish fishery for the first six months of 1988 and how it compares to previous years, as well as discuss other Board business, including selection of a Board Chairman. The public meeting will adjourn at 3 p.m. For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Date: October 26, 1988.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-25134 Filed 10-28-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: Survey of Air Force Small Business Innovation Research (SBIR) Contract Awardees; No Form; and No. OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 15 minutes.

Frequency of Response: One time.

Number of Respondents: 900.

Annual Burden Hours: 225.

Annual Responses: 900.

Needs and Uses: The Air Force needs the survey information to determine the benefits and problems of its Small Business Innovation Research program. The Air Force will analyze the data in light of the stated objectives of Pub. L. 97-219 and report to Congress on the quality of its program.

Affected Public: Businesses or other for-profit; Small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1988.

[FR Doc. 88-25105 Filed 10-28-88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: Space Human Assurance and Reliability Program AFSC Forms 1669 and 1670, No OMB Control Number.

Type of Request: Existing collection in use without an OMB control number.

Average Burden Hours/Minutes Per Response: 20 minutes.

Frequency of Response: On occasion.

Number of Respondents: 30,000.

Annual Burden Hours: 10,000.

Annual Responses: 30,000.

Needs and Uses: The Air Force uses AFSC Forms 1669 and 1670 to collect personal information from contractor personnel who require unescorted entry to space launch and operations areas at Air Force bases and certain NASA facilities. The Air Force needs this information to evaluate and certify those individuals under the Space Human Assurance and Reliability Program (SHARP). If this information were not collected, the SHARP could not screen personnel adequately and mission failure could result.

Affected Public: Individuals; Businesses or other for-profit.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1988.

[FR Doc. 88-25106 Filed 10-28-88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revised Rates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated weights, thresholds, and beneficiary cost-share per diem rates in accordance with changes to the CHAMPUS DRG based payment system published October 21, 1988 (53 FR 41331).

EFFECTIVE DATES: Set #1 Adjusted Standardized Amounts (ASA) are effective for admissions occurring on or after October 1, 1988. The weights and thresholds in table 2 are effective for admissions on or after October 1, 1988. Set #2 Adjusted Standardized Amounts (ASA) are effective for admissions occurring on or after November 21, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program development, Aurora, CO. 80045-6900.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

SUPPLEMENTARY INFORMATION: The final rule published October 21, 1988 (53 FR 41331) amended our final rule published August 31, 1988 (53 FR 33461). The minor revisions were made to conform CHAMPUS to the Medicare PPS policies. As a result of these minor revisions, new CHAMPUS weights, thresholds, and a new beneficiary cost-share per diem were calculated. The revised numbers do not involve changes in the CHAMPUS regulation, but rather a slightly different result of applying the regulation. We refer the reader to the final rules for more detailed explanations of the changes to the CHAMPUS DRG-based payment system and the implementing regulations in 32 CFR Part 199. This notice publishes the

revised weights, thresholds, and beneficiary cost-share per diem.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 26, 1988.

Table 1.—Champus Weights And Threshold Summary

Effective for Admissions Occurring on or after October 1, 1988.

Editorial Note.—This table will not appear in the Code of Federal Regulations.

The following summary shows the final CHAMPUS DRG weights as well as arithmetic mean lengths of stay, geometric mean lengths of stay and outlier thresholds.

BILLING CODE 3810-01-M

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.9094	14.3	11.1	1	35
2	CRANIOTOMY FOR TRAUMA AGE >17	5.2152	14.9	9.0	1	32
3	CRANIOTOMY AGE 0 17	2.7006	10.7	6.7	1	30
4	SPINAL PROCEDURES	2.4221	11.3	8.7	1	32
5	EXTRACRANIAL VASCULAR PROCEDURES	1.6697	6.3	5.3	1	29
6	CARPAL TUNNEL RELEASE	0.5390	1.9	1.6	1	8
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.7812	15.4	8.9	1	32
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.8366	3.5	2.4	1	26
9	SPINAL DISORDERS & INJURIES	2.7502	17.0	9.5	1	33
10	NERVOUS SYSTEM NEOPLASMS W CC	1.4299	8.8	6.1	1	30
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9133	6.0	4.1	1	28
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.7610	12.5	6.9	1	30
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	1.1676	9.2	6.4	1	30
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.5497	8.4	5.6	1	29
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7195	3.8	3.0	1	22
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.6348	6.7	4.9	1	28
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.9897	5.7	3.3	1	27
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9904	6.8	5.0	1	29
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6677	4.8	3.5	1	27
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.8508	10.6	7.5	1	31
21	VIRAL MENINGITIS	0.5550	3.7	3.3	1	15
22	HYPERTENSIVE ENCEPHALOPATHY	0.7214	4.6	3.7	1	27
23	NONTRAUMATIC STUPOR & COMA	1.2346	6.3	3.6	1	27
24	SEIZURE & HEADACHE AGE >17 W CC	0.9171	5.0	3.7	1	27
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5813	3.9	2.9	1	26
26	SEIZURE & HEADACHE AGE 0-17	0.4445	3.0	2.3	1	18
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	2.9596	9.8	5.4	1	29
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	2.6755	9.6	5.2	1	29
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.7883	4.3	2.8	1	26
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.4677	2.7	1.8	1	18
31	CONCUSSION AGE >17 W CC	0.7107	3.5	2.9	1	20
32	CONCUSSION AGE >17 W/O CC	0.4192	2.3	1.8	1	12
33	CONCUSSION AGE 0-17	0.2794	1.5	1.3	1	5
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.4729	7.6	4.5	1	28
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.7782	5.4	3.0	1	27
36	RETINAL PROCEDURES	0.7875	2.8	2.4	1	13
37	ORBITAL PROCEDURES	0.6774	2.6	2.0	1	14
38	PRIMARY IRIS PROCEDURES	0.3692 *	2.8	2.2	1	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6468	1.9	1.6	1	8
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.5528	2.1	1.7	1	11
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4348	1.6	1.3	1	6
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8445	2.8	2.3	1	14
43	HYPHEMA	0.2387	3.6	3.0	1	19
44	ACUTE MAJOR EYE INFECTIONS	0.5122	4.3	3.6	1	21
45	NEUROLOGICAL EYE DISORDERS	0.6562	3.5	2.9	1	20
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.5484	3.8	2.9	1	26
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4886	3.5	2.6	1	22
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.3857	3.1	2.4	1	20
49	MAJOR HEAD & NECK PROCEDURES	3.3410	12.5	9.1	1	33
50	SIALOADENECTOMY	0.6835	2.2	1.9	1	8
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.6567	2.2	1.8	1	10
52	CLEFT LIP & PALATE REPAIR	0.6641	2.8	2.4	1	13

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
53	SINUS & MASTOID PROCEDURES AGE >17	0.6523	2.1	1.6	1	10
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.7383	2.5	1.8	1	17
55	MISCELLANEOUS EAR, NOSE & THROAT PROCEDURES	0.5108	1.5	1.3	1	5
56	RHINOPLASTY	0.5160	1.5	1.3	1	5
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6072	2.1	1.8	1	10
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3565	1.2	1.1	1	2
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.3555	1.2	1.1	1	2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3213	1.1	1.1	1	2
61	MYRINGOTOMY W TUBE INSERTION AGE >17	0.5757	1.6	1.3	1	6
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.4265	2.0	1.5	1	10
63	OTHER EAR, NOSE & THROAT O.R. PROCEDURES	1.1133	3.5	2.6	1	23
64	EAR, NOSE & THROAT MALIGNANCY	1.0790	5.9	3.6	1	27
65	DYSEQUILIBRIUM	0.4765	3.1	2.6	1	15
66	EPISTAXIS	0.5011	3.6	3.0	1	18
67	EPIGLOTTITIS	1.0513	4.4	3.3	1	27
68	OTITIS MEDIA & URI AGE >17 W CC	0.6718	4.1	3.4	1	20
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.5105	3.5	2.8	1	18
70	OTITIS MEDIA & URI AGE 0-17	0.3868	3.0	2.6	1	14
71	LARYNGOTRACHEITIS	0.3339	2.4	2.1	1	11
72	NASAL TRAUMA & DEFORMITY	0.4453	1.8	1.4	1	7
73	OTHER EAR, NOSE & THROAT DIAGNOSES AGE >17	0.6644	3.8	2.7	1	26
74	OTHER EAR, NOSE & THROAT DIAGNOSES AGE 0-17	0.5001	2.8	2.1	1	19
75	MAJOR CHEST PROCEDURES	3.2032	11.3	9.8	1	33
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3618	10.5	7.6	1	31
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2539	5.5	3.7	1	27
78	PULMONARY EMBOLISM	1.4044	8.5	7.5	1	31
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.9412	11.9	9.4	1	33
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.4661	8.3	6.8	1	30
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5919	7.7	5.6	1	29
82	RESPIRATORY NEOPLASMS	1.4872	8.2	5.7	1	29
83	MAJOR CHEST TRAUMA W CC	1.5280	8.1	6.9	1	30
84	MAJOR CHEST TRAUMA W/O CC	0.7941	4.4	3.4	1	27
85	PLEURAL EFFUSION W CC	1.2648	7.6	6.0	1	29
86	PLEURAL EFFUSION W/O CC	0.7554	4.9	3.7	1	27
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.2598	7.7	5.6	1	29
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.3350	6.9	5.5	1	29
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.5559	7.6	6.3	1	30
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.9214	5.5	4.7	1	26
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.5854	4.0	3.5	1	17
92	INTERSTITIAL LUNG DISEASE W CC	1.4674	6.4	5.0	1	29
93	INTERSTITIAL LUNG DISEASE W/O CC	0.9619	5.3	3.7	1	27
94	PNEUMOTHORAX W CC	1.6748	7.3	5.6	1	29
95	PNEUMOTHORAX W/O CC	0.7190	5.5	4.3	1	28
96	BRONCHITIS & ASTHMA AGE >17 W CC	1.2010	6.4	5.3	1	29
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.7572	4.5	3.8	1	22
98	BRONCHITIS & ASTHMA AGE 0-17	0.5236	3.4	2.9	1	16
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.9313	4.5	3.5	1	27
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5621	2.9	2.4	1	15
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.8748	7.0	5.0	1	29
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.8784	4.4	3.0	1	27
103	HEART TRANSPLANT	-	-	-	-	-
104	CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	7.8530	17.0	14.4	2	38

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
105	CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	5.9362	12.0	10.4	1	34
106	CORONARY BYPASS W CARDIAC CATH	5.7948	11.9	11.0	3	35
107	CORONARY BYPASS W/O CARDIAC CATH	4.9114	10.0	9.3	3	28
108	OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	4.8239	10.6	9.0	1	32
109	OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3.8397	10.8	8.1	1	32
110	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	3.8691	11.7	9.8	1	33
111	MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2.6176	8.6	7.8	2	30
112	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2.1288	5.5	4.4	1	28
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.5922	19.1	15.8	2	39
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.0482	10.7	7.5	1	31
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.9800 *	15.2	12.8	1	37
116	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	3.0422	6.7	5.3	1	29
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	3.0922	6.7	5.5	1	29
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.5922	4.1	3.1	1	25
119	VEIN LIGATION & STRIPPING	0.7209	3.0	2.4	1	16
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	3.1943	12.5	7.9	1	31
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	2.2689	8.4	6.7	1	30
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.5571	6.1	4.9	1	28
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.6192	5.1	2.8	1	26
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1437	4.5	3.3	1	27
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	0.7346	2.5	2.0	1	13
126	ACUTE & SUBACUTE ENDOCARDITIS	2.5947	13.5	9.6	1	33
127	HEART FAILURE & SHOCK	1.3020	6.8	5.3	1	29
128	DEEP VEIN THROMBOPHLEBITIS	0.8827	7.9	7.0	1	30
129	CARDIAC ARREST, UNEXPLAINED	2.6012	6.3	3.5	1	27
130	PERIPHERAL VASCULAR DISORDERS W CC	1.0291	6.6	4.8	1	28
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.6582	4.5	3.2	1	27
132	ATHEROSCLEROSIS W CC	1.0936	3.4	2.7	1	20
133	ATHEROSCLEROSIS W/O CC	0.9225	2.8	2.2	1	16
134	HYPERTENSION	0.6420	4.0	3.2	1	24
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.0507	4.8	3.4	1	27
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7210	3.0	2.3	1	18
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8394	4.0	2.3	1	26
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	1.0524	4.8	3.5	1	27
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6412	3.2	2.5	1	19
140	ANGINA PECTORIS	0.8148	3.4	2.8	1	19
141	SYNCOPE & COLLAPSE W CC	0.7023	3.9	3.1	1	22
142	SYNCOPE & COLLAPSE W/O CC	0.5506	3.7	2.5	1	19
143	CHEST PAIN	0.6501	2.8	2.3	1	14
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.4907	6.7	4.7	1	28
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.7818	3.7	2.9	1	24
146	RECTAL RESECTION W CC	2.8845	13.3	12.1	3	36
147	RECTAL RESECTION W/O CC	2.2313	9.7	9.0	2	31
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3002	13.2	11.5	2	35
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2.0182	9.8	8.9	2	32
150	PERITONEAL ADHESIOLYSIS W CC	2.3451	11.0	9.1	1	33
151	PERITONEAL ADHESIOLYSIS W/O CC	1.4501	7.8	6.7	1	30
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.8511	8.1	6.3	1	30
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0690	6.4	5.3	1	29
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.7861	12.7	10.5	1	34
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.9521	8.9	8.0	1	31
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.1046	6.5	4.7	1	28

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
157	ANAL & STOMAL PROCEDURES W CC	1.0403	5.4	4.1	1	28
158	ANAL & STOMAL PROCEDURES W/O CC	0.5865	3.2	2.6	1	18
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.5353	6.8	5.2	1	29
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.7901	3.8	3.1	1	21
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.7197	3.4	2.8	1	19
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.5522	2.3	1.9	1	10
163	HERNIA PROCEDURES AGE 0-17	0.4505	1.7	1.4	1	7
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3501	10.3	9.3	2	33
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.3835	6.8	6.1	1	26
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.3295	5.6	4.8	1	24
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7021	3.4	3.1	1	11
168	MOUTH PROCEDURES W CC	1.2054	4.7	3.0	1	26
169	MOUTH PROCEDURES W/O CC	0.6389	2.3	1.8	1	14
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.6991	11.3	7.8	1	31
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.4352	6.9	5.0	1	29
172	DIGESTIVE MALIGNANCY W CC	1.6338	9.2	6.5	1	30
173	DIGESTIVE MALIGNANCY W/O CC	0.9004	6.8	4.3	1	28
174	G.I. HEMORRHAGE W CC	1.1337	5.4	4.3	1	28
175	G.I. HEMORRHAGE W/O CC	0.7304	4.0	3.3	1	21
176	COMPLICATED PEPTIC ULCER	0.9613	5.9	5.0	1	26
177	UNCOMPLICATED PEPTIC ULCER W CC	0.9508	5.7	4.6	1	28
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6495	4.1	3.4	1	20
179	INFLAMMATORY BOWEL DISEASE	0.9626	6.8	5.5	1	29
180	G.I. OBSTRUCTION W CC	0.9774	6.4	5.1	1	29
181	G.I. OBSTRUCTION W/O CC	0.5539	3.9	3.2	1	21
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7269	4.6	3.6	1	27
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5580	3.6	2.9	1	21
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3316	2.9	2.4	1	14
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7308	4.0	2.8	1	26
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4880	3.0	2.4	1	17
187	DENTAL EXTRACTIONS & RESTORATIONS	0.6858	2.4	2.1	1	11
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0227	5.6	4.2	1	28
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5495	3.5	2.6	1	25
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3683	2.5	1.8	1	13
191	MAJOR PANCREAS, LIVER & SHUNT PROCEDURES	6.0672	21.4	17.3	2	41
192	MINOR PANCREAS, LIVER & SHUNT PROCEDURES	3.2009	12.5	10.4	1	34
193	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W CC	3.5951	15.6	13.1	2	37
194	BILIARY TRACT PROC EXCEPT TOT CHOLECYSTECTOMY W/O CC	2.1617	10.1	8.7	1	32
195	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	1.8417	8.9	7.9	1	31
196	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.5218	7.3	6.8	2	21
197	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	1.4612	7.0	6.2	1	25
198	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0440	5.3	5.0	1	15
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	3.0357	15.2	12.8	2	36
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.6037	9.1	6.6	1	30
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.4134	8.7	6.3	1	30
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.6749	8.8	6.1	1	30
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2507	7.6	4.9	1	28
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2542	7.1	5.4	1	29
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.7802	8.5	5.7	1	29
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.6510	4.5	3.0	1	27
207	DISORDERS OF THE BILIARY TRACT W CC	1.0342	5.4	4.0	1	27
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.5544	3.3	2.7	1	20

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.9359	10.5	9.8	3	28
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.7131	13.0	11.1	2	35
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8910	9.3	7.9	1	31
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.5900	8.9	6.2	1	30
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.3681	11.4	7.9	1	31
214	BACK & NECK PROCEDURES W CC	2.0436	10.3	8.6	1	32
215	BACK & NECK PROCEDURES W/O CC	1.3218	6.9	5.9	1	29
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2.0062	10.0	5.1	1	29
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.5732	11.9	6.4	1	30
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.9604	9.1	7.0	1	31
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0597	4.7	3.9	1	25
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.8509	3.7	2.6	1	26
221	KNEE PROCEDURES W CC	1.6131	6.8	4.8	1	28
222	KNEE PROCEDURES W/O CC	0.8949	3.2	2.6	1	17
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.9617	3.7	2.8	1	23
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.7714	2.6	2.1	1	12
225	FOOT PROCEDURES	0.7531	2.9	2.3	1	16
226	SOFT TISSUE PROCEDURES W CC	1.1863	5.7	3.4	1	27
227	SOFT TISSUE PROCEDURES W/O CC	0.7184	3.0	2.3	1	18
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	0.8531	2.9	2.2	1	19
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6333	2.1	1.7	1	10
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.6673	3.1	2.0	1	21
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	0.8602	3.6	2.3	1	26
232	ARTHROSCOPY	0.7395	2.8	2.0	1	19
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0860	10.4	7.5	1	31
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0114	4.5	3.3	1	27
235	FRACTURES OF FEMUR	1.2323	12.3	6.9	1	30
236	FRACTURES OF HIP & PELVIS	1.1736	10.4	6.5	1	30
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.6262	4.3	3.1	1	27
238	OSTEOMYELITIS	1.4883	11.3	8.7	1	32
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.3966	9.5	6.8	1	30
240	CONNECTIVE TISSUE DISORDERS W CC	1.7007	9.5	7.1	1	31
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7490	5.7	4.5	1	28
242	SEPTIC ARTHRITIS	1.2306	8.6	7.1	1	31
243	MEDICAL BACK PROBLEMS	0.6468	5.0	3.6	1	27
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.9989	6.4	4.8	1	28
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.7386	4.7	3.4	1	27
246	NON-SPECIFIC ARTHROPATHIES	0.8854	6.1	4.0	1	27
247	SIGNS & SYMPTONS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5951	4.3	3.1	1	27
248	TENDONITIS, MYOSITIS & BURSITIS	0.5781	4.1	3.1	1	27
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.5724	4.0	2.7	1	26
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.9845	6.2	4.4	1	28
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5888	3.0	2.0	1	21
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3164	1.3	1.2	1	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	1.0818	6.8	4.5	1	28
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.4769	3.5	2.6	1	26
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4021	2.9	2.0	1	19
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6502	4.0	2.7	1	26
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0912	5.1	4.6	1	20
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9365	4.4	4.0	1	15
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	1.1409	4.8	3.7	1	27
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7446	2.9	2.5	1	14

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	0.9205	2.7	2.3	1	13
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5059	2.1	1.7	1	10
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	3.1188	19.0	12.5	1	36
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.8380	13.1	9.3	1	33
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.8026	7.5	5.6	1	29
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	0.8937	4.1	3.1	1	27
267	PERIANAL & PILONIDAL PROCEDURES	0.5087	2.6	2.1	1	14
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.6814	2.9	1.9	1	18
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6418	7.5	5.4	1	29
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7811	3.4	2.4	1	26
271	SKIN ULCERS	1.7926	11.1	8.3	1	32
272	MAJOR SKIN DISORDERS W CC	1.1188	7.3	5.6	1	29
273	MAJOR SKIN DISORDERS W/O CC	0.7350	5.7	4.1	1	28
274	MALIGNANT BREAST DISORDERS W CC	1.6972	9.5	5.9	1	29
275	MALIGNANT BREAST DISORDERS W/O CC	0.8529	6.0	4.2	1	28
276	NON-MALIGANT BREAST DISORDERS	0.6056	3.5	2.7	1	24
277	CELLULITIS AGE >17 W CC	1.1792	7.5	6.3	1	30
278	CELLULITIS AGE >17 W/O CC	0.7215	5.1	4.3	1	25
279	CELLULITIS AGE 0-17	0.5183	4.1	3.4	1	20
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.6954	4.1	2.6	1	26
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4733	2.9	2.2	1	18
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.3442	1.9	1.6	1	8
283	MINOR SKIN DISORDERS W CC	1.2260	6.6	4.4	1	28
284	MINOR SKIN DISORDERS W/O CC	0.4608	3.5	2.6	1	24
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT;& METABOL DISORDERS	4.3375	21.6	15.3	1	39
286	ADRENAL & PITUITARY PROCEDURES	2.3713	8.6	7.9	2	27
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.3307	15.2	11.1	1	35
288	O.R. PROCEDURES FOR OBESITY	1.8053	6.0	5.6	1	16
289	PARATHYROID PROCEDURES	1.1687	4.9	4.0	1	26
290	THYROID PROCEDURES	0.7687	3.0	2.6	1	13
291	THYROGLOSSAL PROCEDURES	0.4854	1.3	1.2	1	3
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	3.2166	12.2	9.1	1	33
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2339	6.4	5.1	1	29
294	DIABETES AGE >35	0.7560	5.8	4.9	1	27
295	DIABETES AGE 0-35	0.7139	4.6	3.8	1	27
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.1113	6.9	4.9	1	28
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6800	5.0	3.4	1	27
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.4202	3.5	2.7	1	20
299	INBORN ERRORS OF METABOLISM	0.8308	5.1	3.9	1	27
300	ENDOCRINE DISORDERS W CC	0.9508	6.2	4.8	1	28
301	ENDOCRINE DISORDERS W/O CC	0.5416	4.1	2.7	1	26
302	KIDNEY TRANSPLANT	5.7943	16.9	14.9	3	38
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.5890	10.5	9.6	2	33
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.3105	9.7	7.7	1	31
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.4194	6.2	4.7	1	28
306	PROSTATECTOMY W CC	1.3692	6.4	5.4	1	29
307	PROSTATECTOMY W/O CC	0.8706	3.9	3.5	1	16
308	MINOR BLADDER PROCEDURES W CC	1.8415	8.1	5.5	1	29
309	MINOR BLADDER PROCEDURES W/O CC	1.1554	5.9	4.3	1	28
310	TRANSURETHRAL PROCEDURES W CC	1.0122	4.2	3.2	1	27
311	TRANSURETHRAL PROCEDURES W/O CC	0.7549	2.9	2.4	1	16
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7864	3.4	2.8	1	20

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.5777	3.0	2.1	1	23
314	URETHRAL PROCEDURES, AGE 0-17	0.5150	2.7	2.0	1	21
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.2779	9.2	6.6	1	30
316	RENAL FAILURE	1.4710	7.7	5.3	1	29
317	ADMIT FOR RENAL DIALYSIS	0.3494 *	2.8	2.0	1	18
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.4510	7.8	5.3	1	29
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.9113	5.3	3.5	1	27
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	1.0223	5.9	4.9	1	28
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6658	4.4	3.8	1	20
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.5134	4.1	3.4	1	20
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.8548	3.0	2.2	1	19
324	URINARY STONES W/O CC	0.4697	2.2	1.8	1	11
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6644	4.2	3.4	1	27
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.5611	3.3	2.7	1	18
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3942	2.4	2.0	1	12
328	URETHRAL STRICTURE AGE >17 W CC	0.6200 *	5.1	3.9	1	28
329	URETHRAL STRICTURE AGE >17 W/O CC	0.9407	3.9	3.0	1	26
330	URETHRAL STRICTURE AGE 0-17	0.2788 *	0.0	1.6	1	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.1820	6.7	4.5	1	28
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6602	3.9	2.8	1	26
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.5519	3.9	2.9	1	26
334	MAJOR MALE PELVIC PROCEDURES W CC	2.3572	10.4	9.4	2	33
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.9104	8.5	8.1	2	22
336	TRANSURETHRAL PROSTATECTOMY W CC	1.0474	5.1	4.6	1	18
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7664	4.0	3.7	1	12
338	TESTES PROCEDURES, FOR MALIGNANCY	0.9550	4.7	3.1	1	27
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.5448	2.0	1.6	1	10
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4184	1.5	1.3	1	4
341	PENIS PROCEDURES	1.0145	4.1	3.1	1	27
342	CIRCUMCISION AGE >17	0.4489 *	2.9	2.1	1	20
343	CIRCUMCISION AGE 0-17	0.3788 *	0.0	1.7	1	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.2065	5.8	4.1	1	28
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.9216	4.8	3.3	1	27
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.2848	8.9	5.9	1	29
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.6425	4.1	2.3	1	26
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.6510	3.1	2.7	1	14
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.5776	2.5	2.0	1	13
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6354	4.0	3.3	1	22
351	STERILIZATION, MALE	0.3333 *	0.0	1.3	1	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.3205	2.0	1.6	1	10
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0729	9.6	8.9	2	27
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4270	6.9	6.4	1	20
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9626	5.1	4.8	1	14
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8814	4.9	4.5	1	17
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.7482	8.3	7.5	1	28
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2303	5.9	5.4	1	17
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9349	4.7	4.4	1	11
360	VAGINA, CERVIX & VULVA PROCEDURES	0.6153	2.8	2.1	1	19
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.7167	3.0	2.3	1	21
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3890	1.4	1.3	1	4
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6836	3.3	2.7	1	18
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4532	1.8	1.5	1	8

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2870	6.5	5.2	1	29
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.3134	8.2	5.1	1	29
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.6262	3.2	2.5	1	21
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.6323	4.0	3.5	1	17
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4641	2.8	2.3	1	16
370	CESAREAN SECTION W CC	0.9636	5.5	5.0	1	16
371	CESAREAN SECTION W/O CC	0.7681	4.4	4.2	1	9
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5889	3.5	3.0	1	15
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3906	2.4	2.2	1	7
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6228	2.7	2.6	1	7
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.8045	3.8	3.4	1	15
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4780	3.0	2.5	1	15
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.6896	2.9	2.2	1	19
378	ECTOPIC PREGNANCY	0.7934	3.6	3.3	1	11
379	THREATENED ABORTION	0.3216	2.6	1.9	1	16
380	ABORTION W/O D&C	0.2925	1.6	1.4	1	5
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.3788	1.3	1.2	1	4
382	FALSE LABOR	0.1517	1.3	1.2	1	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3538	3.2	2.6	1	18
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3298	2.7	1.9	1	18
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	-	-	-	-	-
386	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	-	-	-	-	-
387	PREMATURITY W MAJOR PROBLEMS	-	-	-	-	-
388	PREMATURITY W/O MAJOR PROBLEMS	-	-	-	-	-
389	FULL TERM NEONATE W MAJOR PROBLEMS	-	-	-	-	-
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	-	-	-	-	-
391	NORMAL NEWBORN	0.1265	2.5	2.3	1	8
392	SPLENECTOMY AGE >17	3.3787	10.8	8.6	1	32
393	SPLENECTOMY AGE 0-17	1.8852	8.3	6.5	1	30
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	0.9034	4.6	2.7	1	26
395	RED BLOOD CELL DISORDERS AGE >17	0.8947	5.8	4.1	1	28
396	RED BLOOD CELL DISORDERS AGE 0-17	0.5832	4.3	3.4	1	27
397	COAGULATION DISORDERS	0.7903	4.4	3.4	1	27
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.6982	9.0	7.0	1	30
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.8064	5.3	4.0	1	28
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.4788	10.6	7.8	1	31
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3.3226	12.3	9.1	1	33
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.0369	4.8	3.5	1	27
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.2736	11.3	7.1	1	31
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1.0232	5.3	3.8	1	27
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.4392	7.3	4.6	1	28
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	3.4431	14.0	9.7	1	33
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.7697	7.3	5.9	1	29
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.0193	4.5	3.3	1	27
409	RADIOTHERAPY	0.8922	6.3	4.0	1	28
410	CHEMOTHERAPY	0.6367	2.9	2.3	1	16
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4562	3.9	2.6	1	26
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4334 *	3.1	2.2	1	22
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.8309	10.3	6.7	1	30
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.9296	6.1	3.9	1	27
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.1196	13.5	9.1	1	33
416	SEPTICEMIA AGE >17	2.0630	9.2	7.0	1	30

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
417	SEPTICEMIA AGE 0-17	0.7059	5.2	4.3	1	28
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9328	6.3	5.1	1	29
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9959	5.7	4.4	1	28
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.8508	5.2	4.3	1	28
421	VIRAL ILLNESS AGE >17	0.6120	4.0	3.3	1	21
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.3966	3.1	2.7	1	13
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.2443	7.0	4.6	1	28
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.1774	20.3	13.0	1	37
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.6333	5.8	3.4	1	27
426	DEPRESSIVE NEUROSES	1.3257	10.9	6.9	1	30
427	NEUROSES EXCEPT DEPRESSIVE	1.1801	12.1	6.9	1	30
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	1.6742	14.0	8.4	1	32
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.4913	11.8	7.7	1	31
430	PSYCHOSES	1.4725	13.6	9.4	1	33
431	CHILDHOOD MENTAL DISORDERS	2.7585	23.5	16.3	1	40
432	OTHER MENTAL DISORDER DIAGNOSES	2.2519	22.5	16.0	1	40
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.7825	9.5	6.2	1	30
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	1.3546	11.9	7.5	1	31
435	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC	-	-	-	-	-
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.8212	24.2	21.3	3	45
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.4543	21.5	17.6	1	41
438	NO LONGER VALID	-	-	-	-	-
439	SKIN GRAFTS FOR INJURIES	2.3152	8.9	6.5	1	30
440	WOUND DEBRIDEMENTS FOR INJURIES	1.8740	8.9	5.6	1	29
441	HAND PROCEDURES FOR INJURIES	0.7837	2.6	2.0	1	15
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.7987	11.0	6.7	1	30
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.2483	5.3	3.1	1	27
444	MULTIPLE TRAUMA AGE >17 W CC	0.7912	3.9	3.2	1	25
445	MULTIPLE TRAUMA AGE >17 W/O CC	0.6664	4.1	2.8	1	26
446	MULTIPLE TRAUMA AGE 0-17	0.5038	3.2	2.2	1	23
447	ALLERGIC REACTIONS AGE >17	0.4401	2.2	1.8	1	10
448	ALLERGIC REACTIONS AGE 0-17	0.4015	2.1	1.8	1	9
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8769	4.4	2.8	1	26
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.5062	2.9	1.9	1	19
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.3465	2.1	1.6	1	10
452	COMPLICATIONS OF TREATMENT W CC	1.2217	6.4	4.1	1	28
453	COMPLICATIONS OF TREATMENT W/O CC	0.5095	3.4	2.4	1	26
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	1.9000	5.6	2.9	1	26
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3835	2.2	1.7	1	12
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.5754	4.7	3.7	1	27
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.6766 *	8.3	3.6	1	28
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.5859	16.3	12.2	1	36
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.8041	11.3	7.1	1	31
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.9202	6.2	3.8	1	27
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	0.8785	4.1	2.5	1	26
462	REHABILITATION	2.5679	25.0	21.2	2	45
463	SIGNS & SYMPTOMS W CC	0.8587	7.0	4.7	1	28
464	SIGNS & SYMPTOMS W/O CC	0.6058	3.9	2.9	1	26
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.3436 *	2.5	1.9	1	14
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.5342	3.2	2.2	1	24
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4072	3.0	2.0	1	21
468	UNRELATED OPERATING ROOM PROCEDURES	2.1648	8.5	5.1	1	29

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-
470	UNGROUPABLE	-	-	-	-	-
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	5.0251	16.9	15.8	5	39
472	EXTENSIVE BURNS W O.R. PROCEDURE	12.2265 *	33.6	19.1	1	43
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	4.9093	17.7	8.8	1	32
474	RESPIRATORY SYSTEM DIAGNOSIS WITH TRACHEOSTOMY	11.0134	25.2	20.0	2	43
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6414	10.2	8.9	1	32
476	UNRELATED PROTASTIC OR PROCEDURE	1.9684	10.9	10.0	2	33
477	UNRELATED NON-EXTENSIVE OR PROCEDURE ONLY	1.0034	5.5	3.4	1	27
900	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE 0-21	1.8184	22.2	13.7	1	37
901	ALC/DRUG ABUSE OR DEP, DETOX, OTH W/O CC AGE > 21	1.2304	13.8	8.6	1	32

BILLING CODE 3810-01-C

Table 2.—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost Share Per Diem

Editorial Note.—This table will not appear in the Code of Federal Regulations.

FY 89 CHAMPUS Adjusted Standardized Amounts

Set #1

[Effective for admissions occurring on or after October 1, 1988]

National Large Urban adjusted standardized amount	$2,866.63
Labor portion	2,116.72
Non-Labor portion	749.91
National Other Urban adjusted standardized amount	2,763.65
Labor portion	2,040.68
Non-Labor portion	722.97
National Rural adjusted standardized amount	2,555.90
Labor portion	2,001.53
Non-Labor portion	554.37

FY 89 CHAMPUS Adjusted Standardized Amounts

Set #2

[Effective for admissions occurring on or after November 21, 1988]

National Large Urban adjusted standardized amount	2,905.30
Labor portion	2,145.27
Non-Labor portion	760.03
National Other Urban adjusted standardized amount	2,797.07
Labor portion	2,065.36
Non-Labor portion	731.71
National Rural adjusted standardized amount	2,577.56
Labor portion	2,018.49
Non-Labor portion	559.07
Cost—Share per diem for beneficiaries other than dependents of active duty members	210.00

[FR Doc. 88-25107 Filed 10-28-88; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 1, 1988; Tuesday, November 8, 1988; Tuesday, November 15, 1988; Tuesday, November 22, 1988; and Tuesday, November 29, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters lised in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Date: October 25, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-25104 Filed 10-28-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 30, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information adn Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 26, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Reinstatement

Title: Application for Grants under the National Diffusion Network
Frequency: Annually
Affected Public: State or local governments and Non-profit institutions
Reporting Burden:
Responses: 50
Burden Hours: 1200
Recordkeeping:
Recordkeepers: 113
Burden Hours: 1356
Abstracts: The application is used by state and local governments and non-profit institutions to apply for discretionary grants under the National Diffusion Network Program. The departemnt uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Revision
Title: Lender's Interest and Special Allowance Request and Report
Frequency: Quarterly
Affected Public: State or Local Governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden:
Responses: 48,300
Burden Hours: 96,600
Recordkeeping:
Recordkeepers: 12,075
Burden Hours: 18,112
Abstracts: This form is used by lenders participating in the Guaranteed Student Loan (GSL) and Plus Programs to request payment of interest and special allowance The department uses this information to capture data from a lender's portfolio for financial and budgetary projections.

[FR Doc. 88-25114 Filed 10-28-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88-876-000 et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

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

1. Williams Natural Gas Company

[Docket No. CP88-876-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-876-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for OXY USA, Inc. (OXY), under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 50,000 MMBtu of natural gas for OXY from various receipt points in Kansas, Oklahoma, Texas and Wyoming to various delivery points on WGN's system in Kansas.

WNG also indicates that transportation service for OXY initially started August 4, 1988, as reported in Docket No. ST88-5524-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Further, WNG states that the peak day quantities to be transported would be 50,000 MMBtu, the average daily quantities would be 50,000 MMBtu, and the annual quantities would be 18,250,000 MMBtu.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP88-874-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-874-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for Enron Gas Marketing, Inc. (Enron) under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 50,000 MMBtu of natural gas for Enron from various receipt points in Kansas to various delivery points on WGN's system in Kansas, Missouri and Nebraska.

Further, WNG states that the peak day quantities to be transported would be 50,000 MMBtu, the average daily quantities would be 50,000 MMBtu, and the annual quantities would be 18,250,000 MMBtu.

WNG also indicates that transportation service for Enron initially started August 1, 1988, as reported in Docket No. ST88-5520-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP88-878-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-874-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for The Kansas Power and Light Company (KPL), under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 3,000 MMBtu of natural gas for KPL from various receipt points in Kansas to various delivery points on WGN's system in Kansas.

Further, WNG states that the peak day quantities to be transported would be 3,000 MMBtu, the average daily quantities would be 3,000 MMBtu, and the annual quantities would be 1,095,000 MMBtu.

WNG also indicates that transportation service for KPL initially started August 5, 1988, as reported in Docket No. ST88-5593-000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP88-877-000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88-877-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for Williams Gas Marketing Company (WGM), under the blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 1,139,985 MMBtu of natural gas for WGM from various receipt points in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WGN's system in Kansas, Missouri, Nebraska, Oklahoma, Texas and Wyoming.

Further, WNG states that the peak day quantities to be transported would be 1,139,985 MMBtu, the average daily quantities would be 1,139,985 MMBtu, and the annual quantities would be 416,094,525 MMBtu.

WNG also indicates that transportation service for WGM initially started August 5, 1988, as reported in Docket No. ST88–5559–000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP88–875–000]

October 24, 1988.

Take notice that on September 29, 1988, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP88–875–000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide transportation on an interruptible basis for Vesta Energy Company (Vesta), under the blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to transport up to 115,000 MMBtu of natural gas for Vesta from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WNG's system in Kansas, Missouri, Oklahoma and Wyoming. NG also indicates that transportation service for Vesta initially started August 5, 1988, as reported in Docket No. ST88–5560–000, pursuant to the self-implementing provision of § 284.223 of the Regulations.

Further, WNG states that the peak day quantities to be transported would be 115,000 MMBtu, the average daily quantities would be 115,000 MMBtu, and the annual quantities would be 41,975,000 MMBtu.

Comment date: December 8, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP89–27–000]

October 25, 1988.

Take notice that on October 7, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–27–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for James River-Norwalk (Norwalk), an end-user of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 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.

Trunkline proposes to transport up to 20,000 Dt. equivalent of natural gas per day on behalf of Norwalk pursuant to a transportation agreement dated July 11, 1988, between Trunkline and Norwalk. The transportation agreement, it is said, provides for Trunkline to receive gas from various existing points of receipt on its system. It is said that Trunkline would then transport and redeliver the gas, less fuel and unaccounted for line loss, to Consumers Power Company in Elkhart County, Indiana.

Trunkline states that the estimated daily and annual quantities would be 20,000 Dt. equivalent and 7,300,000 Dt., equivalent, respectively. It is further stated that service under § 284.223(a) commenced on August 18, 1988, as reported in Docket No. ST88–5676.

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89–52–000]

October 25, 1988.

Take notice that on October 13, 1988, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–52–000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223), for authorization to provide an interruptible transportation service on behalf of Texas Gas Marketing (Texaco), a marketer of natural gas, under United's Blanket certificate issued on Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to an amendment dated September 2, 1988, to the Interruptible Gas Transportation Agreement T1–21–1759, dated July 25, 1988, it proposes to transport up to 103,000 MMBtu per day of natural gas for Texaco for a primary term of one month from the date of first delivery of gas, and shall continue month to month thereafter. United indicates that it proposes to receive gas at several points located in Texas and proposes to redeliver such gas to points located in Louisiana and Mississippi.

United also states that no construction of facilities will be required to provide this transportation service.

United further states that the maximum day, average day, and annual gas delivered volumes would be approximately 103,000 MMBtu, 103,000 MMBtu and 37,595,000 MMBtu, respectively.

United advises that service under § 284.223(a) commenced September 13, 1988, as reported in Docket No. ST88–5871 (flied September 23, 1988).

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP89–42–000]

October 25, 1988.

Take notice that on October 12, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–42–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of MidCon Marketing Corporation (MidCon), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 5,150 MMBtu/day for MidCon from two (2) points of receipt in Cameron Parish, Louisiana to one (1) delivery point in Calcasieu Parish, Louisiana. United states that construction of facilities would not be required to provide the proposed service.

United further states that the estimated daily and annual quantities would be 5,150 MMBtu and 1,879,750 MMBtu respectively, and that service under § 284.223(a) commenced September 1, 1988, as reported in Docket No. ST89–20.

Comment date: December 9, 1988, in accordance with Standard Paragraph G at the end of this notice.

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,

Secretary

[FR Doc. 88-25052 Filed 10-28-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-744; FHLBB No. 0338]

Community Savings Association, Monroeville, PA; Final Action, Approval of Conversion Application

Date: October 12, 1988.

Notice is hereby given that on October 7, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Community Savings Association, Monroeville, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc 88-25070 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-745; FHLBB No. 5514]

Port Washington Savings and Loan Association, Port Washington, WI: Final Action Approval of Conservation Application

Date: October 14, 1988.

Notice is hereby given that on October 14, 1988, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation, pursuant to section 5(i) of the Home Owner's Loan Act of 1933, as amended, approved the application of Port Washington Savings and Loan Association, Port Washington, Wisconsin ("Port Washington") for permission to convert to the stock form of organization and to receive the discretionary authority to merger Port Washington into a subsidiary of Republic Capital Group, Inc., Milwaukee, Wisconsin. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago Illinois 60601.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 88-25071 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-746]

Tremont Federal Savings and Loan Association, Bronx, NY; Final Action; Approval of Conversion and Holding Company Application

Date: October 17, 1988.

Notice is hereby given that on October 14, 1988, the General Counsel, and the Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to the delegated authority, approved the application of Tremont Federal Savings and Loan Association, Bronx, New York ("Tremont Federal") for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of City and Suburban Financial Corporation, Bronx, New York to acquire control of Tremont Federal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 88-25072 Filed 10-28-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may insepct and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200167

Title: Tampa Port Authority Terminal Agreement.

Parties: Tampa Port Authority, The David J. Joseph Company (DJJ).

Synopsis: The agreement provides DJJ with a ten-year lease of property at Hookers Point for operating a scrap metal processing facility and to import/export scrap and processed metals.

Agreement No.: 224-200168.

Title: Port of Jacksonville Terminal Agreement.

Parties: Jacksonville Port Authority, Port Royal, Inc. Inc. (PRI).

Synopsis: Under the agreement PRI will have exclusive use of two acres of land at the 11th Street Terminal and 440 square feet of office space. The agreement defines the applicable rates and charges for terminal use, storage, wharfage, land rental and equipment rental. Rates are negotiable for volume and guarantee cargos; and small boat rates will be applied when applicable. The term of the agreement is one year from effective date.

Agreement No.: 224-200166.

Title: Port of Jacksonville, Terminal Agreement.

Parties: Jacksonville Port Authority (Port), Empresa Lineas Maritimas Argentinas, S.A. (ELMA).

Synopsis: Under the agreement ELMA guarantees 24 vessel calls at the Port of Jacksonville, Florida within one year commencing October 24, 1988, the effective date of this Agreement. In consideration of the stated guarantee the Port grants ELMA a special tariff discount on container and chassis receiving/delivery and wharfage charges. The term of the agreement is one year.

By Order of the Federal Maritime Commission.

Dated: October 26, 1988.

Joseph C. Polking,

Secretary

[FR Doc. 88-25090 Filed 10-28-88; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants; Jacky Maeder Ltd., et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping

Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Jacky Maeder Ltd, 149–21 177th Street, Jamaica, NY 11434. Officers: Joseph A. Garofalo, President, Rudy Merz, Director, Rolf Gasser, Director, Thomas Heinz, Director

Matrix International Logistics, Inc., 205 South Whiting Street, Alexandria, VA 22304. Officers: Paul Smith, President/Treasurer, Steven Hitchcock, Sen. Vice President, Douglas Cruikshank, Exec. Vice President, John H. Robinson, Secretary, Ronald Cruse, Asst. Secretary

SMG Forwarders, Inc., Greenville-Spartanburg Jetport, Greer, SC 29631. Officers: Goetz W. Steinmetz, President, Dieter B. Macchi, Vice President

Cruz Del Sur Shipping, Inc., 1040 Elizabeth Ave., Elizabeth, New Jersey 07201. Officer: Carlos Goncalves, President/Stockholder

Interoceanica Agency, Inc., 2910 Guy N. Verger Blvd., Tampa, Florida 33605. Officers: Guillermo Ferrer, President/Director, Elkin Escobar, Treasurer/Secretary

Transit International Inc., 355–25K, Southend Avenue, New York, N.Y. 11696. Officers: Leonard Tarloff, President, Randye Murname, Stockholder, Mario Yepes, Secretary

Bronson & Sandy, Inc, dba Gladish Export Services, 100 Oceangate Tower, Suite 716, Long Beach, CA 90802. Officers: James A. Bronson, President/Director, Barbara Lynn Sandy, Vice President/Director

A's Philippines Freight Forwarder, 24th Street & Michigan Street, San Francisco, CA 94107. Officer: Cecilio B. Alberto, Jr., Sole Proprietor

Escort Forwarding Inc., 7 Cerro Street, Inwood, NY 11696. Officers: James F. Gill, President/Dir./Stockholder, John Bannister, Vice President/Dir.

FFS Freight International, Inc. (Flying Fish Service), 19401 So. Vermont Ave., Suite A–106, Torrance, CA 90502. Officers: Yutaka Kawi, President/Director, Eiji Miyazato, Vice Pres./Director, Yuki Tachikawa, Vice Pres./Director

Eastport Customs Brokers, Inc., 610 Thimble Shoals Blvd., #203A, Newport News, VA 23606. Officers: Linda Dyer Jones, President/Treasurer, Margaret Ann Adams, Vice President/Sec.

Condor Overseas, Inc., 6683 SW 133 Ct., Miami, Florida 33183. Officer: Carlos I. Orizondo, President

Hitachi Transport System (America), Ltd., 455 West Victoria Street, Compton, CA 90220. Officers: Gyozo Meguro, President/Director, Bobby Y. Kawamoto, Vice President/Sec., Kenichi Shibata, Chief Financial Officer, Jiro Beppu, Director

Chesapeake International Forwarding, Inc., 1801 S. Clinton Street, Baltimore, Maryland 21224. Officers: Matthew Douglas Hogans, President, Melvin Ruzieka, Vice President/Sec./Treas.

International Freight Forwarders of Tampa, Inc., 333 Falkenburg Rd., Suite A116, Tampa, Florida 33619. Officers: Deborah L. Page, President, Charles H. Fallen, Vice President, Richard L. Kimes, Vice President

Asia Trans Line Corp., 163 E. Compton Blvd., Gardena, CA 90248. Kun Sam Lee, President, Taek K. Hwang, Vice President, Seung H. Kim, Treasurer

Associated Customhouse Brokers, Inc., One Airport Way, P.O. Box 22670, Rochester, New York 14692. Officers: Jerry J. Gambino, Jr., President/Dir./Treas., Johanna M. Gambino, Secretary, Jerry J. Gambino, Sr., Director/Stockholder, Robert MacDuffie, Asst. Secretary, Richard J. Springer, Asst. Secretary, Everett Gardner, Controller

By the Federal Maritime Commission.
Dated: October 26, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–25089 Filed 10–28–88; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1989 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 4.0 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal Supplemental Security Income (SSI) (title XVI) monthly benefit amounts for 1989 to $368 for an eligible individual, $553 for an eligible individual with an eligible spouse, and $184 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1987 to be $18,426.51;

(4) The Social Security contribution and benefit base to be $48,000 for remuneration paid in 1989 and self-employment income earned in taxable years beginning in 1989;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1989 to be $500;

(6) The monthly exempt amount under the Social Security retirement earnings test for taxable years ending in calendar year 1989 to be $740 for beneficiaries age 65 through 69 and $540 for beneficiaries under age 65;

(7) the "old-law" contribution and benefit base to be $35,700 for 1989.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1989, and the computation of the old-age, survivors, and disability insurance (OASDI) fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing a table of OASDI "special minimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965–3013.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1988 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1987 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1988 (section 215(i)(2)(C)(iii). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1989 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1989 (section 213(d)(2)), the monthly exempt amounts under the Social Security requirement earnings test for 1989 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1989 (section 215(a)(1)(D)), and the formula

for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1989 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 4.0 percent for benefits under titles II and XVI of the Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 4.0 percent beginning with the December 1988 benefits, which are payable on January 3, 1989. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 4.0 percent effective for payments made for the month of January 1989 but paid on December 30, 1988. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1989 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 1988 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with December 1988, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1988, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1987 through the third quarter of 1988. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1988 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetical mean of this index for the 3 months in that quarter. The Department of Labor's revised Consumer Price Index for Urban Wage Earners and Clerical Workers (reference base of 100 for 1982–1984) for each month in the quarter ending September 30, 1987, was: for July 1987, 112.7; for August 1987, 113.3; and for September 1987, 113.8. The arithmetical mean for this calendar quarter is 113.3 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1988, was: For July 1988, 117.2; for August 1988, 117.7; and for September 1988, 118.5. The arithmetical mean for this calendar quarter is 117.8. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1988, exceeds that for the calendar quarter ending September 30, 1987 by 4.0 percent, a cost-of-living benefit increase of 4.0 percent is effective for benefits under title II of the Act beginning December 1988.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1989, benefits will increase by 4.0 percent beginning with benefits for December 1988 which will be received January 3, 1989. In the case of first eligibility after 1988, the 4.0 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 4.0 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1988); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1989, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Governmental Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 4.0 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The currently monthly benefit amount of $146.10 for an individual under sections 227 and 228 of the Act is increased by 4.0 percent to obtain the new amount of $151.90. The present monthly benefit amount of $73.20 for a spouse under section 227 is increased by 4.0 percent of $76.10.

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 4.0 percent effective January 1989. Therefore, the yearly Federal SSI benefit amount of $4,248 for an eligible individual, $6,384 for an eligible individual with an eligible spouse, and $2,124 for an essential person, which became effective January 1988, are increased, effective January 1989, to $4,416, $6,636, and $2,208 respectively after rounding. The corresponding monthly amounts for 1989 are determined by dividing the yearly amounts by 12, giving $368, $553, and $184, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Average of the Total Wages for 1987

The determination of the average wage figure for 1987 is based on the 1986 average wage figure of $17,321.82 announced in the **Federal Register** on October 29, 1987 (52 FR 41672), along with the percentage increase in average wages from 1986 to 1987 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were

$16,372.45 and $17,416.59 for 1986 and 1987, respectively. To determine an average wage figure for 1987 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1986 average wage figure of $17,321.82 by the percentage increase in average wages from 1986 to 1987 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent):

Average wage for 1987
=$17,321.82×$17,416.59÷$16,372.45
=$18,426.51.

Therefore, the average wage for 1987 is determined to be $18,426.51.

Contribution and Benefit Base

General

The contribution and benefit base is $48,000 for remuneration paid in 1989 and self-employment income earned in taxable years beginning in 1989.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1989 shall be equal to the 1988 base of $45,000 multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year 1987 to (2) the average amount of those wages for the calendar year 1986. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1986 was previously determined to be $17,321,82. The average wage for calendar year 1987 has been determined to be $18,426.51 as stated herein.

Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745. Multiplying the 1987 contribution and benefit base of $45,000 by the ratio 1.0637745 produces the amount of $47,869.85 which must then be rounded to $48,000. Accordingly, the contribution and benefit base is determined to be $48,000 for 1989.

Quarter of Coverage Amount

General

The 1989 amount of earnings required for a quarter of coverage is $500. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1979 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation

Under the prescribed formula, the quarter of coverage amount for 1989 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1987 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1987 has been determined to be $18,426.51 as stated herein.

Quarter of Coverage Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1976, $9,226,48, is 1.99713. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.99713 produces the amount of $449.28 which must then be rounded to $500. Accordingly, the quarter of coverage amount is determined to be $500 for 1989.

Retirement Earnings Test Exempt Amounts

(a) Beneficiaries Aged 70 or Over

Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b)—Beneficiaries Aged 65 Through 69

The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1988 was determined by this formula to be $700. Under the formula, the exempt amount for 1989 shall be the 1988 exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1987 to (2) the average amount of those wages for calendar year 1986. The section further provides that if the amount so determined is not a multiple if $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same way for the contribution and benefit base. Therefore, the ratio of the average wages for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745.

Exempt Amount for Beneficiaries Aged 65 through 69

Multiplying the 1988 retirement earnings test monthly exempt amount of $700 by the ratio of 1.0637745 produces the amount of $744.64. This must then be rounded to $740. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $740 for 1989. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $8,880.

(c) Beneficiaries Under Age 65

Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $510 for 1988. The formula provides that the exempt amount for 1989 shall be the 1988 exempt amount for beneficiaries

under age 65 multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1987 to (2), the average amount of those wages for calendar year 1986. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages

Average wages for this purpose are determined in the same was for the contribution and benefit base. Therefore, the ratio of the average wages for 1987, $18,426.51, compared to that of 1986, $17,321.82, is 1.0637745.

Exempt Amount for Beneficiaries Under Age 65

Multiplying the 1988 retirement earnings test monthly exempt amount of $510 by the ratio 1.0637745 produces the amount of $542.52. This must then be rounded to $540. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $540 for 1989. The corresponding retirement earnings test annual exempt amount for these beneficiaries in $6,480.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the Federal Register on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1989, we divide the average of the total wages for 1987, $18,426.51, by the average of the total wages for each year prior to 1987 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1989.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the 1979 amounts of $180 and $1,085 by 1.88421 produces the amounts of $339.16 and $2,044.37. These must then be rounded to $339 and $2,044. Accordingly, the portions of the average indexed monthly earnings to be used in 1989 are determined to be the first $339, the amount between $339 and $2,044, and the amount over $2,044.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1989, or who die in 1989 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $339 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $339 and through $2,044, plus

(c) 15 percent of the average indexed monthly earnings over $2,044.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 Amendments continued the long established policy of limiting the total monthly benfits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the Federal Register on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the amounts of $230, $332, and $433 by 1.88421 produces the amounts of $433.37, $625.56, and $815.86. These amounts are then rounded to $433, $626, and $816. Accordingly, the portions of the primary insurance amounts to be used in 1989

are determined to be the first $433, the amount between $433 and $626, the amount between $626 and $816, and the amount over $816.

Consequently, for the family of a worker who becomes age 62 or dies in 1989, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $433 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $433 through $626, plus

(c) 134 percent of the worker's primary insurance amount over $626 through $816, plus

(d) 175 percent of the worker's primary insurance amount over $816.

This amount is then rounded to the next lower multiple of $0.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General

The 1989 "old-law" contribution and benefit base is $35,700. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contributions and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefit for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1988 base multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year of 1987 to (2) the average amount of those wages for the calendar year of 1986. If the amount so determind is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1986 was previously determined to be $17,321.82. The average wage for calendar year 1987 has been determined to be $18,426.51, as stated herein.

Amount

The ratio of the average wage for 1987, $18,426.51, compared to that for 1986, $17,321.82, is 1.0637745. Multiplying the 1988 "old-law" contribution and benefit base amount of $33,600 by the ratio of 1.0637745 produces the amount of $35,742.82 which must then be rounded to $35,700. Accordingly, the "old-law" contribution and benefit base is determined to be $35,700 for 1989.

OASDI Fund Ratio

General

Section 215(i) of the Act was amended by section 112 of Pub. L. 98–21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assest of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of (1) the increse in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 15.0 percent for benefit increases for December of 1984 through December 1988, and 20.0 percent thereafter. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation

Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1988 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1988, including advance tax transfers for January 1988, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1988, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio

The combined assets of the OASI and DI Trust Funds at the beginning of 1988 (including advance tax transfers for January 1988) equaled $90,492 million, and the expenditures are estimated to be $222,471 million. Thus, the OASDI fund ratio for 1988 is 40.7 percent, which exceeds the applicable threshold of 15.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1988.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.805, and 13.807 Social Security Programs)

Dated: October 27, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1987	Number of years required at minimum earings level	Special minimum primary insurance amount payable for Dec. 1988	Special minimum maximum family benefit payable for Dec. 1988
$20.20	11	$21.00	$31.60
40.10	12	41.70	62.80
60.30	13	62.70	94.30
80.30	14	83.50	125.50
100.40	15	104.40	156.70
120.60	16	125.40	188.40
140.70	17	146.30	219.60
160.80	18	167.20	251.00
180.90	19	188.10	282.30
200.80	20	208.80	313.50
221.20	21	230.00	345.10
241.20	22	250.80	376.40

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS—Continued

Special minimum primary insurance amount payable for Dec. 1987	Number of years required at minimum earings level	Special minimum primary insurance amount payable for Dec. 1988	Special minimum maximum family benefit payable for Dec. 1988
261.50	23	271.90	408.20
281.50	24	292.70	439.40
301.50	25	313.50	470.40
321.80	26	334.60	502.30
341.90	27	355.50	533.60
361.90	28	376.30	564.70
381.90	29	397.10	596.20
402.00	30	418.00	627.40

[FR Doc. 88-25169 Filed 10-28-88; 8:45 am]
BILLING CODE 4190-11-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Service Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Committee on Rural Health Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-400, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Mr. Jeffery C. Human, Executive Secretary, National Advisory Committee on Rural Health, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Date: October 25, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-25047 Filed 10-28-88; 8:45 am]
BILLING CODE 4160-15-M

Federal Financial Assistance for Telecommunications Demonstration Project in West Texas

The Health Resources and Services Administration (HRSA), Public Health Service, Department of Health and Human Services, announces the anticipated availability of funds in Fiscal Years 1989, 1990, and 1991 for a grant to the Texas Tech University in Lubbock, Texas 79409, for the purpose of a demonstration project to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through the use of video communication between small rural hospitals and tertiary care hospitals with established teaching programs. This is intended to be a one-time program and therefore a Catalog of Federal Domestic Assistance number has not been requested.

Authority

This program is authorized under section 4094(e) of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1320c-5 note).

Single Source Justification

The Department plans to provide Federal financial assistance to the Texas Tech University's proposed model interactive telecommunications network, called MEDNET, which will address needs for consultation, clinical information, and health professional education, in rural and medically underserved urban areas in west Texas, an area covering approximately 135,000 square miles. The medical school at Texas Tech University has a pilot program that is about 4 years old and is a leader in this field. This project provides a unique opportunity to examine the cost-effectiveness of telecommunications in furnishing specialized consultative services to physicians and hospitals in isolated rural areas. The need to assure this type of capability is particularly acute in light of the recent hospital closures and persistent shortage of physicians and other health care personnel in west Texas (over 50 hospitals in Texas have closed during the last 3 years). The proposed technological advances will assist rural hospitals in meeting necessary quality of care standards to continue as approved providers for Medicare and Medicaid services.

The unique circumstances in west Texas and the demonstrated capability and experience of Texas Tech University justify restrictive competition with respect to this project. The specialized focus of the legislation supports the determination to fund this demonstration project in west Texas. The application from the University has undergone objective review by a committee of experts and has been deemed approvable for Federal funding. As called for in the legislative history, the Peer Review Organization (PRO) responsible for monitoring quality of care in Texas will participate in the design and implementation of this demonstration.

Availability of funds

Up to an estimated total of $2.2 million is expected to be available for obligation to support this project during a 3-year project period covering Federal Fiscal Years 1989, 1990 and 1991. The funding will be from several sources within the Department that will potentially benefit from the results of this demonstration project. Continuation awards within the 3-year project period will be made on the basis of satisfactory progress in meeting objectives and on the availability of funds. The funding estimate is subject to change. Funds under this program may not be expended for the acquisition of capital items, including computer hardware. The expected non-Federal share of the project is expercted to exceed $2 million.

Reviews

The application under this program is subject to review, governed by Executive Order 12372 Intergovernmental Review of Federal Programs.

Information may be obtained from and comments directed to:

Dena Puskin, Deputy Director, Office of Rural Health Policy, Health Resources and Services Administration, Public Health Service, Department of Health and Human Services, 5600 Fishers Lane, Room 14-22, Rockville, Maryland 20857, telephone (302) 443-0835.

Dated: September 21, 1988.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 88-25046 Filed 10-28-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-4120-10]

Powder River Regional Coal Team Activities: Public Meeting Announcement

ACTION: Public notice.

SUMMARY: The Powder River Regional Coal Team (RCT) will hold a public meeting on December 15, 1988, to assess the need to resume Federal coal leasing in the Powder River Coal Region; review a proposal to delete from the region Musselshell, Yellowstone, and Golden Valley Counties, all in Montana; and review Federal coal management issues of regional concern. The full agenda and other details for this RCT meeting are set out below.

DATE: The RCT will meet at 8:30 a.m. on December 15, 1988.

ADDRESS: The RCT meeting will be held at the Veterans Administration Medical Center auditorium, 210 South Winchester, Miles City, Montana.

FOR FURTHER INFORMATION CONTACT: Don Bradbson, Telephone (307) 772-2571 or (FTS) 328-2571.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting will be to develop a recommendation for the Secretary of the Interior on whether or not to resume regional coal leasing activites. Comments about the need for leasing may be submitted in writing by December 5, 1988, to State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003, or presented orally during the meeting. The meeting will also serve as a forum for public discussion on Federal coal management issues of regional concern. If appropriate, the RCT may develop additional regional coal management recommendations for Secretarial consideration.

One specific regional issue which the RCT requests public comments on is the removal from the region of Musselshell, Yellowstone, and Golden Valley counties, all in Montana. The Powder River Coal Production Region was established by the Bureau of Land Management (BLM) on November 9, 1979, together with a number of other regions contained in 43 CFR Part 3420. The Region includes the following counties: Big Horn, Golden Valley, Musselshell, Powder River, Rosebud, Treasure, and Yellowstone, all in Montana; and Campbell, Converse, Crook, Goshen, Johnson, Natrona, Niobrara, Sheridan, and Weston, all in Wyoming. The RCT will consider current and projected market conditions, potential for emergency leasing, level of industrial interest, administrative efficiencies, and public comments prior to making any recommendation to the Director. Public comments may be submitted in writing by December 5, 1988, to State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

Musselshell, Yellowstone, and Golden Valley Counties have contributed very little coal production to regional production levels and leasing levels. Only one small surface mine currently operates in Musselshell County producing approximately 15,000 tons annually. There are two 80-acre coal leases in Musselshell County. One was issued in 1928 and the other in 1962. Future mining ventures for other than local use would likely be by underground methods and have smaller production than surface mining in the remainder of the Region. Impacts from smaller underground mines would likely be less than regional in nature.

On May 3, 1988, Meridian Minerals Company submitted an application to exchange 3,674 acres of Federal coal in the Bull Mountains for surface lands in other parts of the State of Montana. The Bureau of Land Management is preparing an environmental impact statement (EIS) as announced in the **Federal Register** Notice of May 16, 1988, Vol. 53, No. 94. A leasing alternative to the exchange proposal is being analyzed in the EIS. Yellowstone Coal Company, through leasing agreements with Meridian, has announced plans to open an underground mine in the Bull Mountains and is preparing an application to obtain a mining permit from the State of Montana. Mining could begin in early 1991 if the exchange with Meridian is completed or if the Federal coal is made available for competitive leasing.

The BLM cannot respond timely or economically to Yellowstone Coal Company's current development and leasing interest. It would take at least 3 years to prepare for a regional coal lease sale through the activity planning process. There is no current regional leasing schedule. Coal market conditions and projected production levels suggest no immediate need to begin a new round of activity planning. It is doubtful leasing interest in the Bull Mountains is sufficient reason to begin a new round of activity planning. However, processing a lease-by-application could take as little as 12 months. A similar savings in preparation cost would also be expected. Removal of Musselshell, Yellowstone, and Golden Valley countries from the region would provide for leasing-by-application in accordance with 43 CFR Part 3425 in these three counties. Accordingly, competitive leasing, in response to an application, could be considered on the proposed Bull Mountain exchange area.

Public input opportunities will be provided on all agenda items. The agenda for this meeting is as follows:

1. Introductions.
2. Approval of Minutes of November 10, 1987, RCT meeting.
3. Regional Coal Activity Status.
   a. Charter Renewal.
   b. Current production.
   c. Preference Right Lease Applications.
   d. Exchanges.
   e. Other activity.
4. Round I Leases.
   a. Status.
   b. Supplemental EIS.
5. Need for Leasing Comments.
   a. Review written comments.
   b. Hearing additional comments.
6. Market Conditions.
   a. Review current market conditions.
   b. Compare current and recent past conditions.
7. RCT Activity Planning Recommendation.
   a. Resumption or deferral of activity planning.
   b. Establish leasing schedule, if necessary.
8. Action plan.
9. Regional Boundary Modification.
   a. Public comment review.
   b. Regional Coal Team guidance.
10. Other Regional Issues.
11. Adjourn.

Hillary A. Oden,

State Director.

[FR Doc. 88-25059 Filed 10-28-88; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-09-4212-14; N-48818]

Realty Action; Battle Mountain District; Shoshone-Eureka Resource Area; Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of federal lands in Lander County, Nevada.

SUMMARY: In response to a request from Nevada Department of Transportation (NDOT), the following described Federal lands have been identified as suitable for direct sale under section 203 and 209

of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian

T. 32 N., R. 44 E.,
Sec. 12, S½SE¼SE¼.

A parcel of land containing 20 acres.

NDOT plans to use these lands for construction of a new maintenance station near Battle Mountain, Nevada. The site is adjacent to the west Battle Mountain Interchange on Interstate 80.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local plans have been identified. the subject lands are within the Battle Mountain Corner grazing allotment. No livestock grazing privileges are adjudicated, therefore no two-year notification to any permittee is required.

Minimum bid for this parcel will be fair market value which will be determined by an appraisal and which will be made available prior to the sale.

The lands described in this Notice will not be offered for sale until all required environmental, archaeological and mineral reports are completed. Under no circumstances will these lands be sold sooner than 60 days after publication of this notice.

Segregation

The subject lands are presently utilized by NDOT under Material Site Right-of-Way NEV–058168 and are, in effect, segregated from the operation of the public land laws, including the mining laws.

Comments

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain Nevada 89820. Objections 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 will become the final determination of the Department of the Interior.

Date: October 14, 1988.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 88–25060 Filed 10–28–88; 8:45 am]

BILLING CODE 4310–HC–M

[AA–250–09–4370–02]

Draft Wild Horse Sanctuary Guidelines Available for Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Wild Horse Sancturary Guidelines for public comment.

SUMMARY: Notice is hereby given that draft guidelines for a wild horse sanctuary are available for public review and comment. The Bureau of Land Management (BLM) must submit final guidelines to Congress by January 1, 1989.

DATES: Comments on the draft guidelines must be received by November 30, 1988.

ADDRESS: Director (250), Bureau of Land Management, Premier Building, Room 901, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION OR TO REQUEST A COPY OF THE DRAFT GUIDELINES, CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the above address; telephone (202) 653–9215.

SUPPLEMENTARY INFORMATION: The BLM intends to place on sanctuaries on private land those excess wild horses that have been removed from the public lands and that are not adopted. One sanctuary was established in western South Dakota in summer 1988. In the Fiscal Year (FY) 1989 Interior and Related Agencies Appropriations Act (Pub. L. 100–446), Congress directed BLM to establish a second sanctuary in FY 1989 "in more than one climate or geographical type" and to develop sanctuary guidelines "for the humane care and health of the animals." In developing these guidelines, which must be submitted to the congressional committees by January 1, 1989, BLM must seek input from all interested parties. Public comments received by the deadline of November 30, 1988, will be considered in the preparation of the final guidelines.

Robert F. Burford,

Director, Bureau of Land Management.

Date: October 24, 1988.

[FR Doc. 88–25062 Filed 10–28–88; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Proposed Contractual Actions Pending Through December 1988.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during October, November, or December of 1988. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the

Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the Federal Register for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, telephone (208) 334–1161.

1. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I; 29,221 acre-feet of stored water in Cascade Reservoir.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. Individual Irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. IDs and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Fifty-nine Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. South Columbia Basin ID, Columbia Basin Project, Washington: Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres.

9. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. Three IDs, Flathead Indian Irrigation Project: Repayment of costs associated with rehabilitation of irrigation facilities.

11. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

12. Crooked River Project, Oregon: Repayment of water service contracts with several individuals and with North Unit ID for a total of approximately 16,100 acre-feet of storage space in Prineville Reservoir.

13. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

14. Palisades Water Users, Inc., Minidoka-Palisades Project: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

15. Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

16. State of Wyoming, Minidoka-Palisades Project: Repayment contract for 33,000 acre-feet of storage space in Palisades Reservoir reserved under the Snake River Compact.

17. Roza ID, Yakima Project, Washington: Proposed supplementary deferment contract. Defer 1 year (2 installments) of construction payments because of cost incurred by the district to obtain additional water supplies in anticipation of drought.

18. Vale Oregon ID, Vale Project, Oregon: Supplementary deferment contract to defer the 1988 construction installment under authority of the Act of September 21, 1959.

19. Four Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract; 1,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually. *Note:* Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operations Agreement.

8. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

9. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

10. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

11. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

12. City of Redding, CVP, California: Amendatory M&I water supply contract.

13. Kanawha Water District—Improvement District No. 2 and 3, CVP, California: Amendatory Pub. L. 84–130 repayment contracts.

14. City of Dos Palos, CVP, California: Contract for the use of surplus capacity in the San Luis Canal. The contract will allow the exchange of water with Central California Irrigation District and transportation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

15. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

16. Contra Costa Water District, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros project. Amendment will also conform contract to current water ratesetting policies.

17. East Bay Municipal Utility District, CVP, California: Temporary M&I water service contract for 75,000 acre-feet of water for up to one year.

18. East Bay Municipal Utility District, CVP, California: Amend Contract No. 14–06–200–5128A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

19. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

20. El Dorado Irrigation District, CVP, California: Amend Contract No. 14–06–200–1357A to provide for additional points of delivery under the contract and to provide for the current CVP water rates to conform the contract with the provisions for sections 105 and 106 of Pub. L. 99–546, if requested by the district.

21. Centerville Community Service District, CVP, California: Water service contract for up to 1,560 acre-feet of M&I water annually.

22. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement.

23. Clear Creek Community Services District, CVP, Califonia: Amendatory water service contract to provide for reduction in annual entitlement.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

—The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. Revised Hydrological Determination: A hydrologic determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.8 million acre-feet. Upon the request of the Secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

4. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,800 acre-feet per year. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

5. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,5000 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement, in principle.

6. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

7. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract; 7,600 acre-feet per year for M&I use.

8. Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado: Contract to continue O&M of Grand Valley powerplant.

9. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Agreement for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. Central Utah Water Conservancy District, Bonneville Unit, CUP, Utah: D&MC contract; Advancement of $65.7 million for construction of laterals and drains of the irrigation and drainage system.

11. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

12. Florida Water Conservancy District, Florida Project, Colorado: Lease of power privileges to develop the hydroelectric power potential of the Florida Project.

13. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

14. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, suplus water if available.

15. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

16. Carlsbad ID, Carlsbad Project, New Mexico; Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

17. Weber Basin Water Conservancy District, Weber Basin Project, Utah:

Repayment contract for R&B of the A.V. Watkins Dike.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water Service contract for delivery of up to 173,000 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. Water delivery contracts, BCP, Arizona: For a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. Contract with the State of Arizona, BCP: for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 4.5 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

11. AK-Chin Farm, Maricopa, Arizona: Repayment contract for $6.1 million SRPA escalation loan.

12. Contracts for delivery of Surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

13. Central Arizona Water Conservation District, CAP, Arizona: Amendatory contract to increase the district's CAP repayment ceiling and to update other provisions of the contract.

14. Maricopa-Stanfield and Central Arizona IDDs, CAP, Arizona: Contract to transfer O&M of the Santa Rosa Canal to Maricopa-Stanfield.

15. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

16. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange or an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

17. Golden Shores Water Conservation District, BCP, Arizona: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

18. Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in *Arizona* v. *California* and BCP.

19. Winterhaven Present Perfected Rights contract for portion of Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in *Arizona* v. *California* and BCP.

20. Country of San Bernardino, San Bernardino, California: Repayment contract for $28.6 million SRPA loan.

21. Maricopa-Stanfield Irrigation and Drainage District, CAP, Arizona: D&MC contract for $4.5 million to complete the district's distribution system.

22. Central Arizona Irrigation and Drainage District, CAP, Arizona: D&MC contract for $20 million to complete the district's distribution system.

23. Wellton-Mohawk IDD and Gold Dome Corporation (Corporation), Gila Project, Arizona: Contract for delivery of 6.14 acre-feet of water year to the Corporation through Wellton-Mohawk Division facilities.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 585–6413.

1. Individual Irrigators, M&I, and miscellaneous water users, Great Plains Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms of up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota; Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and silimar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P-SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

7. Green Mountain Reservior, Colorado-Big Thompson Project: Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

8. Ruedi Reservior, Fryingpan-Arkansas Project, Colorado: Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservior.

9. Fryingpan-Arkanasas Project, Colorado: East Slope Storage system consisting of Pueblo Reservior, Twin Lakes, and Turquoise Reservior; Contract negotiations for temporary and long-term storage and exchange contracts.

10. Cedar Bluff ID No. 6 and the State of Kansas, Cedar Bluff Unit, P-SMBP, Kansas: Repayment contract: Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservior for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation.

Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

11. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Colorado-Big Thompson Project, Colorado: Contract for storage and conveyance of water for the Windy Gap Project; Amendatory contract to make administrative and technical revisions to conform the contract terms and conditions to the Windy Gap project as actually constructed and operated.

12. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservior storage capacity by 1917 acre/feet which will be utilized for irrigation and municipal purposes.

13. Garrison Diversion Unit, P-SMBP, North Dakota: Repayment contract; Renegotiation of the master repayment contract with Garrision Diversion Conservancy District to bring the terms in line with the Garrision Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

14. Gray Goose ID, Gray Goose Unit, P-SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P-SMBP, as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

15. Hilltop ID, Hilltop Unit, P-SMBP, South Dakota: Contract negotiations to integrate Hilltop ID into the P-SMBP as authorized prusuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

16. Pacific Power and Light Company, Glendo Unit, P-SMBP, Wyoming: Contract negotiations renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

17. Corn Creek ID, Glendo Unit, P-SMBP, Wyoming: Repayment contract for 10,100 acre-feet of supplemental irrigation water from Glendo Reservior.

18. City of Dickinson, North Dakota: Cancellation of Contract No. 9-07-60-WR052 pursuant to the Act entitled, "Making Continuing Appropriations for the Fiscal Year Ending Sepetmber 30, 1988, and for Other Purposes," Pub. L. 100–202. The contract will be replaced with a new contract for the repayment of $1,625,000 over a period of 40 years at 7.21 percent and payment of operation, maintenance, and replacement costs.

19. Lavaca-Navidad River Authority, Palmetto Bend Project, Texas: Amendatory contract to increase repayment ceiling to cover repairs to a drop structure.

20. Hildalgo County ID No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

21. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

22. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

23. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Amendatory contract for revised repayment schedule to reflect credit for project lands transferred to National Park Service under Public Law 94–235 for the Chickasaw National Recreation Area.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) the significance of the impacts(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Darrell D. Mach,

Acting Commissioner of Reclamation.

Date: October 21, 1988.

[FR Doc. 88–24984 Filed 10–28–88; 8:45 am]

BILLING CODE 4310–09–M

[INT–DES–88–50]

San Xavier Development Project; Pima County, AZ

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft environmental impact statement (DEIS); INT–DES–88–50.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation has prepared a DEIS on the San Xavier Development Project. The project is an authorized feature of the Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA) (Pub. L. 97–293).

According to SAWRSA, the Secretary of the Interior acting through the Bureau of Reclamation, will deliver 50,000 acre-feet of water to the San Xavier District of the Tohono O'odham Nation. The DEIS addresses the impacts of developing approximately 9,600 to 13,500 acres for irrigation.

DATE: A 60-day public review period commences with the publication of this notice. Comments should be submitted to the Regional Director at the address below within the 60-day review period.

ADDRESSES: Single copies of the DEIS may be obtained on request to the Regional Director or the Arizona Projects Office at the addresses below.

Copies of the DEIS are available for inspection at the following locations:

Director, Public Affairs Office, Department of the Interior, Bureau of Reclamation, Room 7644, Washington, DC 20240; Telephone: (202) 343–4662

Assistant Commissioner—Resources Management, Department of the Interior, Bureau of Reclamation, Program Services Division—Environmental Services, Federal

Center, Building 67, Room 638, Denver, CO 80225; Telephone: (303) 236–9336
Regional Director, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 427, Boulder City, NV 89005; Telephone: (702) 293–8710
Arizona Projects Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, AZ 85068; Telephone: (602) 870–6760.

Libraries

Phoenix City Library, Main Library, 12 East McDowell, Phoenix, AZ 85004
Tucson Public Library, Regional Headquarters, 200 South 6th Avenue, Tucson, AZ 85701
San Zavier District Library, San Xavier District, Tucson, AZ 85634.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Rinne (Regional Environmental Office, Lower Colorado Region), (702) 293–8560; or Dr. Wayne O. Deason (Manager of Environmental Services, Federal Center), (303) 236–9336.

SUPPLEMENTARY INFORMATION: The San Xavier Development Project was developed in response to the requirement of SAWRSA to design and construct a new efficient irrigation system for agricultural purposes within the San Xavier District. The DEIS identifies three alternatives and the no Federal action alternative. The proposed project includes land leveling and construction of a main canal, pipelines, field ditches, turnouts, floodways, and operational headquarters. Construction is scheduled to begin in mid-1990 with delivery of water by October 1992.

The DEIS describes the existing environment and analyzes the environmental consequences of construction and operation of the alternatives investigated.

Date: October 13, 1988.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 88–25057 Filed 10–28–88; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31341]

Arizona Eastern Railway Co.; Acquisition and Operation Exemption; Globe Branch of Southern Pacific Transportation Co.

Arizona Eastern Railway Company (AERC) has filed a notice of exemption to acquire by purchase and to operate approximately 134 route miles of rail line of the Globe Branch of the Southern Pacific Transportation Company (Globe) extending from milepost 1098.87 at Bowie, AZ, to milepost 1231.90 at Miami, AZ. The agreement for the transfer of this rail line between Arizona and Globe was to be consummated approximately on or before October 7, 1988.

A transaction relating to the continuance in control of AERC by Kyle Railways, Inc., a noncarrier holding company, is the subject of a notice of exemption filed concurrently in Finance Docket No. 31341 (Sub-No. 1), *Kyle Railways, Inc.—Continuance In Control Exemption—Arizona Eastern Railway Company.* Any comments must be filed with the Commission and served on: Fritz R. Kahn, Suite 700—The McPherson Building, 901 15th Street NW., Washington, DC 20005.

The transaction will not involve the issuance of securities by AERC, which will be a Class III carrier.

AERC must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservations Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988).[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25076 Filed 10–28–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31341 (Sub–1)]

Kyle Railways, Inc.; Continuance in Control Exemption; Arizona Eastern Railway Co.

Kyle Railways, Inc., (KYLE) a noncarrier in control of several affiliated railroad companies, has filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding its continuance in control of Arizona Eastern Railway Company (AERC), upon its becoming a nonconnecting carrier.

AERC, a wholly owned noncarrier subsidiary of KYLE, has filed concurrently a notice of exemption in Finance Docket No. 31341, *Arizona Eastern Railway Company—Acquisition and Operation Exemption—Globe Branch of the Southern Pacific Transportation Company,* relating to AERC's purchase and operation of the 134 miles of railroad extending from the main line junction at Bowie, AZ (milepost 1098.87) to the end of the branch at Miami, AZ (milepost 1231.90).

KYLE indicates that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the the transaction.

Decided: October 17, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25075 Filed 10–28–88; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub–45X)]

Norfolk and Western Railway Co.; Abandonment Exemption Between Flipping Creek Junction and Goodwill, WV

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 3.02-mile line of railroad between milepost BG–7.48, at Flipping Creek Junction, WV, and milepost BG–10.50, at Goodwill, WV.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been

[1] FWW has certified that it has identified such sites and structures to the appropriate State historic preservation office for Texas.

notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 30, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by November 10, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 21, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 5, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE, at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

Decided: October 18, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–25074 Filed 10–28–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Charles J. Bobeck, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles J. Bobeck, M.D., of 1729 Termino Avenue, Suite A, Long Beach, California, proposing to revoke his DEA Certificate of Registration AB1051894, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory basis for the issuance of the Order to Show Cause was that Dr. Bobeck is not currently authorized to handle controlled substances in the state in which he maintains his DEA Certificate of Registration.

The Order to Show Cause was sent registered mail, return-receipt requested, to Dr. Bobeck's registered address. The returned receipt indicates that the Order to Show Cause was received on September 14, 1988. Dr. Bobeck has not made any response. Therefore, pursuant to 21 CFR 1301.54(d), the Administrator concludes that Dr. Bobeck has waived his opportunity for a hearing, and enters this final order based upon the information contained in the investigative file. 21 CFR 1301.57.

The Administrator finds that on January 7, 1988, the California Board of Medical Quality Assurance (BMQA) ordered the revocation of Dr. Bobeck's physician's and surgeon's license in that state, effective January 22, 1988. As of that date, Dr. Bobeck was no longer authorized to handle controlled substances in the State of California.

The Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to maintain the registration of an individual who lacks state authority to handle controlled substances. See 21 U.S.C. 823(f); and *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33148 (1984). Since Dr. Bobeck is no longer authorized to handle controlled substances in the State of California, the DEA Certificate of Registration previously issued to him in that state must be revoked pursuant to 21 U.S.C. 824(a)(3).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that DEA Certificate of Registration AB1051894, previously issued to Charles J. Bobeck, M.D., be, and it hereby is, revoked.

It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 31, 1988.

Dated: October 24, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–25100 Filed 10–28–88; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–72]

J L B, Inc., d/b/a Boyd Drugs; Revocation of Registration

On October 5, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to J L B, Inc., d/b/a Boyd Drugs, of 911 North Dixie Avenue, Elizabethtown, Kentucky 42701, proposing to revoke DEA Certificate of Registration AJ3023467, and to deny any pending applications for renewal of the registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for seeking revocation of the registration was that the pharmacy's continued registration would be inconsistent with the public interest.

Respondents James F. Jefferson, R.Ph., Gregory V. Barnes, R.Ph., and James A. Lancaster, R.Ph., individually and as corporate officers of J L B, Inc., through counsel, timely filed requests for a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, the matter was scheduled for a hearing on August 30, 1988, in Louisville, Kentucky. On August 26, 1988, Respondents' counsel telephonically contacted the Administrative Law Judge's Office to withdraw the pharmacy's request for a hearing. Accordingly, the scheduled hearing was cancelled. Respondents' counsel were instructed to promptly submit written withdrawals of their requests for a hearing to the Administrative Law Judge. On

September 19, 1988, Judge Bittner issued a Memorandum and Order allowing Respondents until October 3, 1988, to show cause why the proceedings in this matter should not be terminated. Having received no response, on October 11, 1988, the Administrative Law Judge terminated the proceedings before her.

Based upon the foregoing, the Administrator concludes that Respondents waived their opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.57, issues this final order revoking the pharmacy's DEA Certificate of Registration and denying any pending applications for renewal of the registration based upon the DEA investigative file and record of this proceeding.

At the time the Order to Show Cause was issued, James F. Jefferson, R.Ph., Gregory V. Barnes, R.Ph., and James A. Lancaster, R.Ph. each owned one-third interest in J L B, Inc., d/b/a Boyd Drugs (hereinafter referred to as "Boyd Drugs"). Jefferson and Barnes operated the pharmacy. Also at that time, Messrs. Jefferson, Barnes and Lancaster each owned one-third interest in L J B, Inc., d/b/a Jeff's Prescription Shop (hereinafter referred to as "Jeff's Prescription Shop"), and E-Town Surgical Supply Company, both of Elizabethtown, Kentucky. Shortly before the scheduled date for the administrative proceeding regarding Boyd Drugs, Mr. Lancaster relinquished all ownership interest and control in Boyd Drugs and E-Town Surgical Supply Company. Messrs. Jefferson and Barnes also relinquished all ownership interest and control in Jeff's Prescription Shop.

The Administrator finds that in late 1985, the Kentucky State Police received information that James F. Jefferson, R.Ph. was unlawfully selling controlled substances from Boyd Drugs for other than legitimate purposes. Based upon that information, on December 19, 1985, an undercover Kentucky State Police officer approached Mr. Jefferson at Boyd Drugs and handed him a piece of paper marked "200 Darvon Compound-65 and 25 Vicodin" wrapped around $60.00. Mr. Jefferson handed the officer two manufacturer's bottles which were later found to contain 199 dosage units of Darvon Compound-65. The bottles themselves were marked "Sandoz Restoril" and "Upjohn Cleocin HCL." Upon realizing that Mr. Jefferson had not given him the requested Vicodin tablets, the officer returned to Boyd Drugs and informed Mr. Jefferson of his error. Mr. Jefferson then handed the officer a clear vial containing 25 dosage units of Vicodin tablets. On May 12, 1986, Mr. Jefferson was indicted by the Hardin County, Kentucky grand jury on two state felony counts of illegal distribution of controlled substances and one misdemeanor count of false labeling of a controlled substance. The State of Kentucky later dismissed the charges after Mr. Jefferson was indicted by a Federal grand jury for the same offenses on September 10, 1987.

On May 15, 1986, Investigators from the Kentucky State Board of Pharmacy and the DEA Louisville Resident Office attempted to conduct a controlled substance accountability audit and inspection at Boyd Drugs. After they informed Gregory Barnes that they planned to conduct a controlled substance audit at the pharmacy, he scattered a large pile of pharmacy records and told them he could not provide them with the pharmacy's last inventory. Investigators also found that the pharmacy's Schedule II order forms were not readily retrievable and many order forms appeared to be missing. Because of the poor conditions of the pharmacy records and controlled substance stock, no audit was conducted on that date. Investigators from the DEA Louisville Resident Office and the Kentucky State Board of Pharmacy returned to Boyd Drugs on March 6, 1987, to conduct an accountability audit of the pharmacy's controlled substance stock and records. The audit included a review of ordering and dispensing activities at the pharmacy for the period from May 22, 1985, to March 6, 1987. It revealed excessive, unexplained shortages or overages for nearly all of the 49 controlled substances included in the audit. The pharmacy could not account for more than 268,000 combined dosage units of controlled substances during the audit period. In addition, the controlled substance records were not uniformly maintained, nor were they readily retrievable, in violation of Federal controlled substance laws and regulations.

After reviewing the pharmacy's controlled substance dispensing records, DEA Investigators interviewed many of the alleged customers and authorizing physicians whose names appeared on the pharmacy's controlled substance prescription records. Many of the customers informed the Investigators that they repeatedly received controlled substances from Boyd Drugs either without presenting any prescriptions whatsoever, or by presenting old prescription bottles for which no additional refills were authorized. Two customers admitted to receiving various controlled substances from the pharmacy on an almost daily basis. They also admitted that they would sometimes receive controlled substances from Mr. Jefferson in exchange for marijuana. Two other customers admitted to receiving controlled substances through the mail on a routine basis from Boyd Drugs years after the listed physician stopped treating them. The listed physician told DEA Investigators that he had not issued any prescriptions for those individuals since January 1984. Other physicians stated that they had asked Jefferson and Barnes to stop dispensing controlled substances to their patients without their authorization. Their requests were often ignored.

A lengthy DEA investigation revealed that at least 50 individuals regularly received controlled substances from Boyd Drugs in any one of the following illegal manners: (1) Without presenting any prescription whatsoever, (2) through unauthorized refills of legitimate prescriptions, (3) through alleged "call-in" prescriptions used by the pharmacy to conceal its unlawful dispensing activities, or (4) through refills of the unauthorized "call-in" prescriptions. The investigation revealed that both Jefferson and Barnes were fully aware that they were dispensing unauthorized controlled substances to the various individuals. Their knowledge of the unlawful activities is compounded by evidence that they intentionally deleted much of the unauthorized refill information from the pharmacy's computerized prescription records.

Based upon the results of the investigation conducted by the Kentucky State Police, the Kentucky Board of Pharmacy and the DEA Louisville Resident Office, on September 10, 1987, a Federal grand jury for the Western District of Kentucky issued a 692 count indictment against Jefferson, Barnes and others, alleging numerous instances of unlawful dispensing of controlled substances, conspiracy to unlawfully dispense controlled substances, furnishing of false or fraudulent information in records required to be kept, conspiracy to commit theft of controlled substances, aiding and abetting, and unlawful use of the U.S. mail to send controlled substances. As of this date, Jefferson and Barnes have yet to be tried on these charges.

In determining whether a registrant's continued registration would be inconsistent with the public interest, the Administrator must consider the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's [or registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's [or registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Administrator must make findings with respect to all five factors listed above. In determining where the public interest lies, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case. See *David E. Trowick, D.D.S.*, Docket No. 86–69, 53 FR 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987); *Paul Stepak, M.D.*, 51 FR 17556 (1986); *Felix Seisen, M.D.*, Docket No. 85–53, 51 FR 3863 (1986); and *Anne L. Hendricks, M.D.*, Docket No. 86–4, 51 FR 41030 (1986).

In this case, the second, fourth, and fifth factors under 21 U.S.C. 823(f) are of importance in evaluating whether the continued registration of Boyd Drugs is contrary to the public interest. The Administrator finds no evidence which would support the continued registration of Boyd Drugs. On the contrary, the evidence relating to Boyd Drugs' experience in handling controlled substances is overwhelmingly negative.

Both Jefferson and Barnes routinely dispensed controlled substances to a number of individuals for other than legitimate medical purposes. A majority of the controlled substances dispensed from Boyd Drugs were either not dispensed pursuant to legitimate prescriptions or were not authorized refills of legitimate prescriptions. Rather, controlled substances were freely dispensed illegally to individuals who were willing to pay for them. The pharmacy could not account for more than 268,000 dosage units of controlled substances. Controlled substance records were tampered with, missing, disorganized, and not kept in accordance with Federal and state regulations. Jefferson and Barnes ignored requests by physicians to stop dispensing controlled substances to several individuals.

Jefferson and Barnes blatant disregard for controlled substance laws and regulations turned Boyd Drugs into a haven for illegal drug activity in the Elizabethtown area They abrogated their responsibilities as registrants and as pharmacists. The only rationale for their activities which can be gleaned from the record is uncontrolled greed and avarice.

Neither Mr. Jefferson nor Mr. Barnes presented any evidence in support of maintaining the DEA registration for Boyd Drugs. Thus, based upon the overwhelming evidence which demonstrates that the pharmacy's continued registration would be contrary to the public interest, and the absence of any evidence to support its continued registration, the Administrator concludes that the DEA registration for Boyd Drugs must be revoked as inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AJ3023467 be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective November 30, 1988.

John C. Lawn,

Administrator.

Dated: October 24, 1988.

[FR Doc. 88–25099 Filed 10–28–88; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 88–67]

David W. Bradway, Merchantville, NJ; Notice of Hearing

Notice is hereby given that on July 20, 1988, the Drug Enforcement Administration, Department of Justice, issued to David W. Bradway, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 1, 1988, commencing at 10:00 a.m., at the United States Claims Court, Courtroom 10, Room 309, 717 Madison Place NW., Washington, DC.

Dated: October 26, 1988.

John C. Lawn,

Administrator Drug Enforcement Administration.

[FR Doc. 88–25094 Filed 10–28–88; 8:45 am]

BILLING CODE 4410–09–M

Richard D. Close; Denial of Application

On July 20, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard D. Close, of Merrimac Valley Clinical Laboratory, 411 Merrimac Street, Methuen, Massachusetts, 01844, proposing to deny his application, executed on July 1, 1986, for registration as an analytical laboratory under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

On August 19, 1988, Respondent, proceeding pro se, waived his opportunity for a hearing and submitted a written statement on the issues raised by the Order to show Cause. Based upon the waiver of hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order based upon the investigative file and the written statement submitted by Respondent. See 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

The Administrator finds that Respondent is presently being prosecuted by the State of Massachusetts on a four-year felony complaint for obtaining controlled substances by fraud and deceit. A joint investigation of Respondent was undertaken by the Massachusetts State Police/Diversion Investigation Unit and the DEA Boston Office after both agencies received various reports which indicated that Richard Close was writing prescriptions for prescription drugs and purporting to be a medical doctor.

On August 17, 1986, a DEA Diversion Investigator and a Massachusetts State Police Investigator conducted a preregistration interview with Respondent regarding his educational background, training and previous employment history. During the interview, Respondent repeatedly misrepresented his past experience to the investigators. Respondent told investigators that in 1972, he graduated from the University of Brussels School of Medicine in Brussels, Belgium, with an MA in Physiology. However, a check with the University of Brussels revealed that Respondent attended that institution for only one year and dropped out. Although Respondent continued to attend some classes from 1972 to 1975, Respondent did not graduate and he did not receive a degree

The Administrator finds that Respondent was also untruthful about many aspects of his previous employment. Respondent told investigators that from 1978 to 1980 he was director of the ambulatory cardiovascular unit at Peter Bent Brigham Hospital in Boston, Massachusetts. The Administrator of that hospital denied this. Although Respondent was employed from 1978 to 1980 at Brigham Hospital, he was not director of the cardiovascular unit. Respondent was employed as a technician in the cardiovascular unit and his job was merely to monitor equipment.

Respondent's "embellishments" of his past experience are not rare, unintentional inaccuracies. A check of Respondent's records on file at Brigham Hospital revealed that Respondent also supplied inaccurate information on his hospital employment application. That application states that Respondent graduated from Boston University (BU) in 1972 with an MA in Physiology and that he attended the University of Brussels from 1972 to 1975, completing three years of medical school. Respondent, in fact, never attended BU graduate school and did not receive a graduate degree. Respondent was discharged from employment at Brigham Hospital due to his involvement in a financial scandal. Respondent was billing patients for his services when no fee was required. There is also an allegation that Respondent was acting in the capacity of a medical doctor, clearly without the necessary credentials.

Respondent further misrepresented his background to investigators in that he reported that he received his Ph.D. in Physiology from Columbia Pacific University in San Raphael, California in 1985. Respondent, in fact, was awarded a Ph.D in Philosophy. Columbia Pacific University is a mail order degree program which gives full academic credit for an applicant's work, educational, and other "life achievements."

In addition to making fraudulent representations about his educational and employment history, Respondent also posed as a medical doctor According to the pharmacist at the CVS Pharmacy in Lexington, Massachusetts, Respondent had visited the store since 1978, and always gave the pharmacist the impression that he was a medical doctor. The pharmacist filled out telephone prescriptions for Respondent for Class VI substances under Massachusetts General Laws, Chapter 94C, during a period from 1978 to 1986. Respondent, in fact, signed a prescription "Richard Close, M.D." Respondent also told the CVS pharmacist that he graduated from medical school in Brussels, and that he also had a Ph.D. in Anatomy and Physiology from the same school. Respondent, again, has no degree from medical school in Brussels.

In reviewing the prescriptions at CVS Pharmacy, investigators observed two prescriptions written by a doctor from Massachusetts General Hospital for "Richard Close, M.D." When this doctor was contacted, he confirmed that he had written two prescriptions for "Richard Close," but not "M.D." A closer scrutiny of the prescriptions revealed that the "M.D." was written by a different hand. Another prescription retrieved was written by Respondent for another patient. Prosecution for obtaining drugs by fraud and deceit is pending.

Respondent now requests a DEA Certificate of Registration to do drug testing at the Merrimac Valley Clinical Lab in Methuen, Massachusetts, of which Respondent is President. Respondent has suggested that he might develop an assay for home drug tests for parents to give to their children. Respondent would need small amounts of controlled substances for this purpose. The Administrator finds, however, that Respondent cannot be entrusted with a DEA registration.

In his written statement, Respondent merely denies the allegations raised by the Order to Show Cause. Although Respondent has been issued a license by the State of Massachusetts to conduct chemical analysis with controlled substances, he has provided no other evidence to overcome the overwhelming volume of inculpatory information against him. The written statement provides nothing more than an unsupported, self-serving statement to the effect that his registration would not be inconsistent with the public interest.

In view of the foregoing facts regarding Respondent's behavior, his giving false information about his educational and employment background, misrepresenting himself as a medical doctor to a pharmacist and others, writing unauthorized prescriptions and the fact that criminal charges are pending against him, the Administrator concludes that the issuance of a registration to Respondent would be inconsistent with the public interest. Respondent's repeated exaggerations, embellishments and fraudulent representations about his background reflect the Respondent's intense desire to exercise a power and authority which he is not qualified to exercise. Respondent is not deserving of such public trust and confidence. Respondent's behavior clearly shows that he cannot be entrusted to handle controlled substances in a lawful and responsible manner. His application for registration must be denied.

Having concluded that there are lawful bases for the denial of Respondent's application, and having concluded that his pending application for registration must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that the application for registration, executed by Richard D. Close, on July 1, 1986, be, and it hereby is, denied.

John C. Lawn,
Administrator.

Dated: October 24, 1988.

[FR Doc. 88-25103 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-45]

Donald Curry-Allen, Bradbury, CA; Notice of Hearing

Notice is hereby given that on March 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Donlad Curry-Allen, D.O. an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday , November 16, 1988, commencing at 10:00 a.m., at the Alhambra Municipal Court, 150 West Common Wealth Avenue, Division One Courtroom, Second Floor, Alhambra, California.

Dated: October 25, 1988.

John C. Lawn,
Administrator, Drug Enforcement Administration.

[FR Doc. 88-25095 Filed 10-28-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-52]

Arthus Sklar, R.Ph., d/b/a King Pharmacy, Brighton, MI; Hearing

Notice is hereby given that on April 12, 1988, the Drug Enforcement Administration, Department of Justice, issued to Arthur Sklar, R.Ph., d/b/a King

Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration AK1806085 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 8, 1988, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, 1st floor courtroom, Ann Arbor, Michigan.

Dated: October 24, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-25098 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

Arthur Stanley Lightfoot, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Arthur Stanley Lightfoot, M.D., of 2000 E. Bristol Road, Burton, Michigan, proposing to revoke DEA Certificate of Registration AL3069970, and to deny any pending applications for renewal of his registration on the ground that Dr. Lightfoot is no longer authorized to handle controlled substances in the State of Michigan.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Lightfoot on September 10, 1988. More than thirty days have passed since Dr. Lightfoot received the Order to Show Cause and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Lightfoot has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on December 1, 1987, the State of Michigan Department of Licensing and Regulation, Board of Medicine, issued an Order of Summary Suspension of Dr. Lightfoot's medical license in that state. His state medical license has not yet been reinstated. Consequently, Dr. Lightfoot is no longer authorized to handle controlled substances in that state.

The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See *Fazal Ahmad, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); and *Aqostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). In the instant case it is clear that Dr. Lightfoot is not currently authorized to handle controlled substances in the State of Michigan. Without the appropriate state authority to handle controlled substances, Dr. Lightfoot cannot hold a DEA registration.

Therefore, based upon Dr. Lightfoot's lack of state authority to handle controlled substances, the Administrator concludes that his DEA Certificate of Registration must be revoked. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AL3069970, previously issued to Arthur Stanley Lightfoot, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 31, 1988.

John C. Lawn,

Administrator.

Dated: October 24, 1988.

[FR Doc. 88-25102 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

Emilio H. Marquez, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Emilio H. Marquez, M.D., 2550 E. Gage Avenue, Huntington Park, California, proposing to revoke DEA Certificate of Registration AM6883462, and to deny any pending applications for renewal of his registration on the ground that Dr. Marquez is no longer authorized to handle controlled substances in the State of California.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Marquez on September 12, 1988. More than thirty days have passed since Dr. Marquez received the Order to Show Cause and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Marquez has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the investigative file. 21 CFR 1301.57.

The Administrator finds that the California Board of Medical Quality Assurance (BMQA) revoked Dr. Marquez's physician's and surgeon's license in that state on July 14, 1987. Consequently, Dr. Marquez is no longer authorized to handle controlled substances in that state.

The Drug Enforcement Administration does not have the authority to maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 823(f) and 824(a)(3). The Administrator has consistently so held. See *Fazal Ahmad, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). In the instant case it is clear that Dr. Marquez is not currently authorized to handle controlled substances in the State of California. Without the appropriate state authority to handle controlled substances, Dr. Marquez cannot hold a DEA registration.

Therefore, based upon Dr. Marquez's lack of state authority to handle controlled substances, the Administrator concludes that his DEA Certificate of Registration must be revoked. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AM6883462, previously issued to Emilio H. Marquez, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective October 31, 1988.

Dated: October 24, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-25101 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-49]

Summer Grove Pharmacy, Shreveport, LA; Hearing

Notice is hereby given that on April 12, 1988, the Drug Enforcement Administration, Department of Justice, issued to Summer Grove Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration AS3413755 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, November 17, 1988, commencing at 10:00 a.m., at the United States Custom House, 423 Canal Street, courtroom, 211, New Orleans, Louisiana.

Dated: October 24, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-25097 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-54]

Michael C. Vizcarra, Hesperia CA; Notice of Hearing

Notice is hereby given that on April 22, 1988, the Drug Enforcement Administration, Department of Justice, issued to Michael C. Vizcarra, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 15, 1988, commencing at 10:00 a.m., at the Alhambra Municipal Court, 150 West Common Wealth Avenue, Division One Courtroom, Second Floor, Alhambra, California.

Dated: October 25, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-25096 Filed 10-28-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between The Nuclear Regulatory Commission and the Occupational Safety and Health Administration; Worker Protection at NRC-licensed Facilities

The Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) have entered into a Memorandum of Understanding (MOU) to provide general guidelines for interface activities between the two agencies. The MOU is designed to ensure that there will be no gaps in the protection of workers at NRC-licensed facilities where the OSHA also has health and safety jurisdiction. At the same time, the MOU is designed to avoid duplication of effort on the part of the two agencies in those cases where it is not always practical to sharply identify boundaries between the NRC's responsibilities for nuclear safety and the OSHA's responsibilities for industrial safety.

The MOU, which replaces an existing procedure for interagency activities, defines the general areas of responsibilities of both agencies, describes generally the efforts of each to achieve worker protection at NRC-licensed facilities, and provides general procedures for the coordination of interface activities and exchange of information between the NRC and OSHA. The text of the MOU is set out below.

Purpose and Background

1. The purpose of this Memorandum of Understanding between the U.S. Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA) is to delineate the general areas of responsibility of each agency; to describe generally the efforts of the agencies to achieve worker protection at facilities licensed by the NRC; and to provide guidelines for coordination of interface activities between the two agencies. If NRC licenses observe OSHA's standards and regulations, this will help minimize workplace hazards.

2. Both NRC and OSHA have jurisdiction over occupational safety and health at NRC-licensed facilities. Because it is not always practical to sharply identify boundaries between the nuclear and radiological safety NRC regulates and the industrial safety OSHA regulates, a coordinated interagency effort can ensure against gaps in the protection of workers and at the same time, avoid duplication of effort. This memorandum replaces an existing procedure for interagency activities, "General Guidelines for Interface Activities between the NRC Regional Offices and the OSHA."

Hazards Associated With Nuclear Facilities

3. There are four kinds of hazards that may be associated with NRC-licensed nuclear facilities:

a. Radiation risk produced by radioactive materials;

b. Chemical risk produced by radioactive materials;

c. Plant conditions which affect the safety of radioactive materials and thus present an increased radiation risk to workers. For example, these might produce a fire or an explosion, and thereby cause a release of radioactive materials or an unsafe reactor condition; and,

d. Plant conditions which result in an occupational risk, but do not affect the safety of licensed radioactive materials. For example, there might be exposure to toxic nonradioactive materials and other industrial hazards in the workplace.

Generally, NRC covers the first three hazards listed in paragraph 3 (a, b, and c), and OSHA covers the fourth hazard described in paragraph 3 (d). NRC and OSHA responsibilities and actions are described more fully in paragraphs 4 and 5 below.

NRC Responsibilities

4. NRC is responsible for licensing and regulating nuclear facilities and materials and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the Nuclear Nonproliferation Act of 1978; and in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. These NRC responsibilities cover the first three nuclear facility hazards identified in paragraph 3 (a, b, c). NRC does not have statutory authority for the fourth hazard described in paragraph 3 (d).

NRC responsibilities include protecting public health and safety; protecting the environment; protecting and safeguarding materials and plants in the interest of national security; and assuring conformity with antitrust laws for certain types of facilities, e.g., nuclear power reactors. Agency functions are performed through: Standards-setting and rulemaking;

technical reviews and studies; conduct of public hearings; issuance of authorizations, permits and licenses; inspection, investigation and enforcement; evaluation of operating experience, and confirmatory research.

OSHA Responsibilities

5. OSHA is responsible for administering the requirements established under the Occupational Safety and Health Act (OSHA Act) (29 U.S.C. 651 *et seq.*), which was enacted in 1970. OSHA's authority to engage in the kinds of activities described below does not apply to those workplace safety and health conditions for which other Federal agencies exercise statutory authority to prescribe and enforce standards, rules or regulations.

Under the OSH Act, every employer has a general duty to furnish each employee with a place of employment that is free from recognized hazards that can cause death or serious physical harm and to comply with all OSHA standards, rules, and regulations.

OSHA standards contain requirements designed to protect employees against workplace hazards. In general, safety standards are intended to protect against traumatic injury, while health standards are designed to address potential overexposure to toxic substances and harmful physical agents, and protect against illnesses which do not manifest themselves for many years after initial exposure.

OSHA standards cover employee exposures from all radiation sources not regulated by NRC. Examples include x-ray equipment, accelerators, accelerator-produced materials, electron microscopes and betatrons, and naturally occurring radioactive materials such as radium.

It is estimated that the Act covers nearly 6 million workplaces employing more than 80 million workers. Federal OSHA covers approximately three-fifths, or four million, of these workplaces. States which operate OSHA-approved job safety and health programs, or "Plans," cover the remainder.

OSHA State Plan States are encouraged, but not required, to delineate their authority for occupational safety and health at NRC-licensed facilities in the same manner as Federal OSHA.

The OSHA areas of responsibility described in this memorandum are subject to all applicable requirements and authorities of the OSH Act. However, the industrial safety record at NRC-licensed nuclear power plants is such that OSHA inspections at these facilities are conducted normally as a result of accidents, fatalities, referrals, or worker complaints.

Interface Procedures

6. In recognition of the agencies' authorities and responsibilities enumerated above, the following procedures will be followed:

Although NRC does not conduct inspections of industrial safety, in the course of inspections of radiological and nuclear safety, NRC personnel may identify safety concerns within the area of OSHA responsibility or may receive complaints from an employee about OSHA-covered working conditions. In such instances, NRC will bring the matter to the attention of licensee management. NRC inspectors are not to perform the role of OSHA inspectors; however, they are to elevate OSHA safety issues to the attention of NRC Regional management when appropriate. If significant safety concerns are identified or if the licensee demonstrates a pattern of unresponsiveness to identified concerns, the NRC Regional Office will inform the appropriate OSHA Regional Office. In the case of complaints, NRC will withhold, from the licensee, the identity of the employee. In addition, when known to NRC, NRC will encourage licensees to report to OSHA accidents resulting in a fatality or multiple hospitalizations.

When such instances occur within OSHA State Plan States' jurisdiction, the OSHA Regional Office will refer the matter to the State for appropriate action.

7. OSHA Regional Offices will inform the appropriate NRC Regional Office of matters which are in the purview of NRC, when these come to their attention during Federal or State safety and health inspections or through complaints. The following are examples of matters that would be reported to the NRC:

a. Lax security control or work practices that would affect nuclear or radiological health and safety.

b. Improper posting of radiation areas.

c. Licensee employee allegations of NRC license or regulation violations.

8. The NRC and OSHA need not normally conduct joint inspections at NRC-licensed facilities. However, under certain conditions, such as investigations or inspections following accidents or resulting from reported activities as discussed in items 6 and 7 above, it may be mutually agreed on a case-by-case basis that joint investigations are in the public interest.

9. The chemical processing of nuclear materials at some NRC-licensed fuel and materials facilities presents chemical and nuclear operational safety hazards which can best be evaluated by joint NRC–OSHA team assessments. Each agency will make its best efforts to support such assessments at about 20 facilities once every five years. Of these facilities, about one-third are in the OSHA Plan States. OSHA will also assist in promoting such participation by State personnel in OSHA Plan States.

10. Based upon reports of injury or complaints at nuclear power plant sites, OSHA will provide NRC with information on those sites where increased management attention to worker safety is needed. The NRC will bring such information indicating significant breakdown in worker safety to the attention of licensee management and monitor corrective actions. This will not interfere with OSHA authority and responsibility to investigate industrial accidents and worker complaints.

11. Power reactor sites are inspected by NRC Region-based and Resident Inspectors. Personnel from NRC Regional Offices routinely conduct inspections at most fuel and materials licensed facilities. In order to enhance the ability of NRC personnel to identify safety matters under OSHA purview during nuclear and radiological safety inspections, OSHA will provide NRC Regional personnel with basic chemical and industrial safety training and indoctrination in OSHA safety standards, consistent with ongoing OSHA training programs. To enhance the ability of OSHA and State Plan personnel to effectively participate in the Operational Safety Team Assessments, NRC will provide training in basic radiation safety requirements, consistent with ongoing NRC training programs. Details of such training will be as mutually agreed by the NRC Technical Training Center and the OSHA National Training Institute.

12. Resolution of policy issues concerning agency jurisdiction and operational relations will be coordinated by the NRC Deputy Executive Director for Operations, and by the OSHA Director of Policy. Appropriate Headquarters points of contact will be established.

13. Resolution of issues concerning inspection and enforcement activities involving both NRC and OSHA jurisdiction at NRC-licensed facilities will be handled between NRC's Office of Enforcement and OSHA's Directorate of Compliance Programs. Each NRC and OSHA Regional Office will designate points of contact for carrying out interface activities.

For the Nuclear Regulatory Commission.
Victor Stello, Jr.,
Executive Director for Operations.

October 21, 1988.

For the Occupational Safety and Health Administration.
John A. Pendergrass,
Assistant Secretary.
[FR Doc. 88-25085 Filed 10-28-88; 8:45 am]
BILLING CODE 7590-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-92]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Informal Executive Subcommittee.

DATE AND TIME: November 18, 1988, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Office Building 6, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code ADI-1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NAC Informal Executive Subcommittee was established under the NAC to assist the Chair in planning the activities, establishing meeting agendas, and otherwise guiding the activities of the Council. The Council is chaired by Dr. John L. McLucas, and includes eight other members, seven of whom chair standing committees of the Council.

The meeting will be closed to the public. The sole agenda item will be planning for the coming year of the activities of the Council, the committees, and their task forces, with emphasis throughout on prospective future membership of each of these groups and their interactions with NASA and outside parties. Throughout the sessions, the qualifications of these individuals will be candidly discussed and appraised with respect to the tasks to be accomplished. Because the meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this meeting should be closed to the public. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Closed.

October 25, 1988.
Philip D. Waller,
Director, General Management Division.
[FR Doc. 88-25044 Filed 10-28-88; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

National Science Board; Nominations for Membership November 1, 1988

The National, Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *Ex officio*, as follows:

Terms Expire May 10, 1990

Dr. Perry L. Adkisson, Chancellor, The Texas A&M University System, System Administration Building, Executive Offices, Room 219, College Station, Texas.
Dr. Annelise G. Anderson, Senior Research Fellow, The Hoover Institution, Room 301-M, Stanford University, Stanford, California.
Dr. Craig C. Black, Director, Los Angeles County Museum of Natural History, 900 exposition Boulevard, Los Angeles, California.
Dr. Rita R. Colwell, Director, Maryland Biotechnology Institute and Professor of Microbiology, Microbiology Building, University of Maryland, College Park, Maryland.
Dr. Thomas B. Day (Vice Chairman), President, San Diego State University, 5300 Campanile Drive, San Diego, California.
Dr. James J. Duderstadt, President, The University of Michigan, 2074 Fleming Administration Building, Ann Arbor, Michigan.
Dr. K. June Lindstedt-Siva, Manager, Environmental Sciences, Atlantic Richfield Company, 515 South Flower Street, Los Angeles, California.
Dr. Kenneth L. Nordtvedt, Jr., Professor of Physics, Department of Physics, Montana State University, Bozeman, Montana.

Terms Expire May 10, 1992

Dr. Frederick P. Brooks, Jr., Kenan Professor of Computer Science, Department of Computer Science, University of North Carolina, Chapel Hill, North Carolina.
Dr. F. Albert Cotton, W.T. Doherty-Walch Foundation Distinguished Professor of Chemistry and Director, Laboratory for Molecular Structure and Bonding, Texas A&M University, College Station, Texas.
Dr. Mary L. Good (Chairman), Senior Vice President, Technology, Allied-Signal, Inc., P.O. Box 1021R, Morristown, New Jersey.
Dr. John C. Hancock, 4550 Warwick Boulevard, Suite 901, Kansas City, Missouri.
Dr. James B. Holderman, President, University of South Carolina, Columbia, South Carolina.
Dr. James L. Powell, President, Reed College, 3203 Southeast Woodstock Boulevard, Portland, Oregon.
Dr. Frank H. T. Rhodes, President, Cornell University, 300 Day Hall, Ithaca, New York.
Dr. Howard A. Schneiderman, Senior Vice President, Research and Development and Chief Scientist, Monsanto Company, 800 N. Lindbergh Boulevard, St. Louis, Missouri.

Terms Expire May 10, 1994

Dr. Warren J. Baker, President, California Polytechnic State University, San Luis Obispo, California.
Dr. Arden L. Bement, Jr., Vice President, Technical Resources, TRW, Inc., 1900 Richmond Road, Cleveland, Ohio.[1]
Dr. D. Allan Bromley, Director, Wright Nuclear Structure Laboratory, P.O. Box 6666, 272 Whitney Avenue, Yale University, New Haven, Connecticut.[1]
Dr. Daniel C. Drucker, Graduate Research Professor, Department of Aerospace Engineering, Mechanics and Engineering Science, University of Florida, 231 Aerospace Building, Gainesville, Florida.
Dr. Charles L. Hosler, Senior Vice President for Research and Dean of Graduate School, 114 Kern Building, The Pennsylvania State University, University Park, Pennsylvania.
Dr. Miguel Rios, Jr., President, ORION International Technology, 300 San Mateo, N.E., Suite #200, Albuquerque, New Mexico.[1]
Dr. Roland W. Schmitt, President, Rensselaer Polytechnic Institute, Pittsburgh Building, Troy, New York.

(One Vacancy)

Member Ex Officio

Mr. Erich Bloch (Chairman, NSB Executive Committee), Director, National Science Foundation, Washington, DC.

Section 4(c) of the National Science Foundation Act of 1950 as amended,

[1] NSB Nominee.

states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

All members whose terms expire in May 1990 are eligible for reappointment.

The Board and the Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, Washington, DC, 20550, no later than January 3, 1989.

Any questions should be directed to Mrs. Lois Hamaty, Staff Assistant, National Science Board (202/357–7512).

Mary L. Good,

Chairman, National Science Board.

[FR Doc. 88–25082 Filed 10–28–88; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Niagara Mohawk Power Corp, Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from certain requirements of 10 CFR 50.71(e)(3)(i), to the Niagara Mohawk Power Corporation (the licensee), for the Nine Mile Point Nuclear Station, Unit 2 (NMP–2), located at the licensee's site in Oswego County New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from meeting certain requirements of 10 CFR 50.71(e)(3)(i). Specifically, 10 CFR 50.71(e)(3)(i) requires licensees to submit a revision of the original FSAR containing those original pages that are still applicable plus new replacement pages within 24 months of either July 22, 1980 or the date of issuance of the operating license, whichever is later. 10 CFR 50.71(e)(3)(i) also requires this revision of the FSAR to be up to date as of a maximum of 6 months prior to the date of filing the revision. A license limited to 5 percent or rated power was issued for NMP–2 on October 31, 1986, and a license authorizing operation up to 100 percent of rated power was issued July 2, 1987. The exemption would allow the licensee to delay the submittal of the updated Final Safety Analysis Report (FSAR) for Nine Mile Point, Unit 2 (NMP–2) for approximately six moths or not later than April 30, 1989. In addition, the exemption would allow the licensee to submit only the revised pages of the FSAR rather than submitting a complete, updated FSAR. When the updated FSAR is submitted no later than April 30, 1989 it will be updated to April 30, 1988. Although this will be up to a year before the actual submittal date, it is only six months before the original required submittal date.

The licensee's request for exemption, and the basis therefor are contained in its letter of September 16, 1988.

The Need for the Proposed Action

The exemption is required in order to permit the licensee to delay the submittal of the updated FSAR and to submit only those pages revised since the last FSAR amendment in May 1987. The NMP–2 FSAR is unusually large (35 volumes) and substantial effort, over 55,000 person hours, is estimated to be involved in the project.

Environmental Impacts of the Proposed Action

The exemption would allow submittal of the updated FSAR to be delayed six months. The exemption would also permit the licensee to submit only those pages of the FSAR which have been revised. This exemption is administrative and will not affect plant hardware or procedures.

The proposed exemption affects only the methods by which the FSAR is kept up-to-date and does not affect plant operations or the risk of facility accidents. Accordingly, the exemption will not increase the probability or consequences of any reactor accident sequence and will not increase the probability or consequences of any reactor accident sequence and will not increase the probability or consequences of any reactor accident sequence and will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant radioloigcal impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The staff has concluded that there is no significant environmental impact associated with the proposed exemption. Therefore, alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce the environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations.

Alternative Use of Resources

These actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 2," dated May 1985.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Penfield, Library, State University College, Oswego, New York 13126.

Dated at Rockville, Maryland, this 27th day of October 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 88–25084 Filed 10–28–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-333]

Power Authority of the State of New York, James A. FitzPatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.62(c)(4) to Power Authority of the State of New York (the licensee), for the James A. FitzPatrick Nuclear Power Plant located in Oswego, New York.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR 50.62(c)(4) to allow the FitzPatrick plant to use an injection rate of 50 gallons per minute (gpm) of 11.5 weight percent sodium pentaboirate solution in the standby liquid control system (SLCS). The regulation requires that each boiling water reactor must have SLCS equivalent in control capacity to 86 gpm with a boron concentration of 13 weight percent sodium pentaborate.

The Need for the Proposed Action

The exemption is needed because the licensee proposes to depart from 10 CFR 50.62(c)(4) requirements, as a result of the FitzPatrick plant having a reator vessel diameter which is smaller than that used to establish the minimum flow and boron content requirements set forth in the regulation, and the licensee's use of enriched boron in the sodium pentaborate solution. In the licensee's request for amendment dated August 24, 1988, the license proposed to use an injection rate of 50 gallons per minute of 11.5 weight percent sodium pentaborate solution because its vessel diameter is 218 inches, in comparison to the 251 inches which is the basis for the 86 gallons per minute requirement, and because the sodium pentaborate solution will be made up from boron enriched to 34.7 atom percent Boron-10 isotope.

Generic Letter 85-03 "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," dated January 28, 1985 states, in part:

> The "equivalent in control capacity" wording was chosen to allow flexibility in implementation of the requirement.

The 86 gallons per minute and 13 weight percent sodium pentaborate concentration were values used in NEDE-24222, "Assessment of BWR Mitigation of ATWS, Volumes I and II," December 1979 for BWR/4, BWR/5, and BWR/6 plants with 251-inch diameter vessels. NEDE-24222 recognized that different values would provide equivalent control capacity for smaller plants.

Environmental Impacts of the Proposed Action

The exemption provides a degree of protection for the FitzPatrick reactor equivalent to that required by the regulation for reactors with larger reactor vessels for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an Anticipated Transient Without Scram (ATWS). The exemption will not affect containment integrity, nor the probability of facility accidents. Thus, post-accident radiological, releases will not be greater than previously determined, nor will the granting of the proposed exemption otherwise effect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemption will not affect non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been Concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the FitzPatrick plant's operation and would not enhance the protection of the environment.

Alternative Use of Resources

This does not involve the use of resources not previously considered in connection with the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee s request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of human environment

For further information with respect to this action, see the request for amendment dated August 24, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Rockville, Maryland, this 24th day of October 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 88-25086 Filed 10-28-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26216; File Nos. SR-MCC-87-05 and SR-MCC-88-07]

Self-Regulatory Organizations; Order Temporarily Approving Proposed Rule Changes by the Midwest Clearing Corp. To Establish Fund/Serv

On October 21, 1987, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR-MCC-87-05), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") [1] to establish facilities to allow MCC members to use NSCC's Mutual Fund Settlement, Entry, and Registration Verification Service or "Fund/Serv". On March 21, 1988, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] On June 14, 1988, MCC filed a second proposed rule change (File No. SR-MCC-88-07), also described below, pursuant to section 19(b)(1) of the Act to establish participants fund requirements for Fund/Serv users, to establish Fund/Serv procedures, and to clarify that MCC participants may exchange Fund/Serv data directly with MCC's Fund/Serv facilities manager. On September 8, 1988, the Commission published notice of the second proposed rule change in the **Federal Register** to solicit comments from interested persons.[3] To date no comments have been received on either filing. As discussed below, this Order approves both proposals on a temporary basis through January 31, 1989.

[1] 15 U.S.C. 78s(b)(1)

[2] Securities Exchange Act Release No 25497 (March 21 1988), 53 FR 10027.

[3] *See* Securities Exchange Act Release No 26067 (September 8, 1988), 53 FR 35944

I. Description

The proposal amends MCC's rules to establish Fund/Serv and to authorize MCC to promulgate procedures to implement that service. Fund/Serv will enable MCC participants to transmit mutual fund purchase and sale transactions, confirmations, settlement and registration data to mutual fund participants.[4] The National Securities Clearing Corporation ("NSCC") will act as MCC's facilities manager for Fund/Serv.[5] In its role as facilities manager, NSCC will receive Fund/Serv data directly from MCC participants and will retransmit that data to the appropriate mutual fund. MCC participants, however, will settle Fund/Serv transactions at MCC.

An MCC participant who wishes to use Fund/Serv must notify MCC of its intention and provide its Fund/Serv clearing fund contribution to MCC.[6] MCC will obtain from NSCC a Fund/Serv account number for the participant and a date when the participant may access the service. After the MCC participant meet these requirements, it will be able to transmit trade information directly to NSCC for retransmission to any mutual fund that is a Fund/Serv participant.

The proposal will require Fund/Serv broker-dealers to submit trade information to MCC's facilities manager, NSCC, by 7:00 p.m. on the day of the trade ("T").[7] NSCC will forward all acceptable trades to the mutual fund. Mutual funds will submit confirmations and rejections of orders to NSCC by 11:00 a.m. on T+1. NSCC will acknowledge receipt of this information to the mutual fund and will forward such information to MCC's participants. NSCC also will notify the mutual funds and the broker-dealers of orders which are neither confirmed nor rejected. Broker-dealers may submit corrections concerning the money values of trades or concerning the number of shares on either T+1 or T+2. Mutual funds will have until T+2 to confirm orders not previously confirmed and may make price changes in orders confirmed on T+1. Purchases and redemptions not involing physical shares will settle on T+5. For redemptions involving physical shares, the mutual fund, once it has received the physical share certificates, will submit a release to settlement. Upon receipt of the release to settlement, Fund/Serv will settle the transaction on the day following the receipt of the release.[8]

On the evening of T+4, NSCC will provide mutual funds, broker-dealers, and MCC with a settlement summary listing transactions that are due to settle the following day. MCC will use this settlement summary to prepare an adjustment report which lists each participant's Fund/Serv debits and credits and to determine whether a Fund/Serv member is in a net pay or collect position. MCC will combine each participant's Fund/Serv net pay or collect figure with its other MCC obligations to obtain each participant's total net pay or collect figure. Participants will pay MCC approximately one hour after MCC notifies them of a "pay" settlement figure, at about 3:00 p.m. on settlement day in next-day funds. MCC pays its participants at approximately 3:00–3:30 p.m. on settlement day in next-day funds.[9] NSCC and MCC will settle their obligations with each other on T+6 in federal funds, which are immediately available.

As with NSCC's Fund/Serv, MCC's Fund/Serv is not a guaranteed service. If an MCC participant defaulted on its Fund/Serv payment obligations before NSCC has paid its participants, MCC will notify NSCC of the default so NSCC could stop payments to affected mutual funds and reverse transactions settled on behalf of the defaulting MCC participant. If NSCC receives notification of the default after it has paid its participants, NSCC could stop payment on those funds (NSCC pays its participants in next-day funds) or, if NSCC is unable to stop payment, it could charge the affected participants the next day. If NSCC is unable to collect the funds it paid on behalf of the defaulting MCC participant, NSCC may declare those mutual fund participants to be in default and may use their clearing fund deposits or liquidate any open contractual commitments on their behalf. If MCC fails to notify NSCC by 10:00 a.m. on settlement day[10] and NSCC suffers a loss or liability as a result of the MCC participant default, MCC will indemnify NSCC. MCD will fund its obligation to NSCC first from the defaulting participant's MCC Fund/Serv clearing fund contribution, and then from that participant's contribution to the general MCC clearing fund. If MCC still has not satisfied the loss, then MCC will allocate that loss, *pro-rata*, among MCC participants using Fund/Serv. If the loss remains unsatisfied then MCC would follow its loss recovery rules and procedures.

If a mutual fund participant defaults on payment obligations arising from transactions with MCC participants, NSCC would inform MCC so that MCC would reverse any settlement credits to MCC participants because of transactions due to settle with the defaulting mutual fund.[11] If MCC receives notice of the default after it has paid its participants, it could stop payment of those checks (like NSCC, MCC pays its participants in next-day funds) or it could charge its participants for the amount of the transactions the next day. If MCC cannot collect the funds recharged to its participants, MCC may declare those participants to be in default and may use their clearing fund deposit or liquidate their securities which MCC has in its possession.

MCC has established a Fund/Serv clearing fund contribution requirement to cover potential Fund/Serv risks. The amount of a participant's clearing fund contribution is based on the settlement debits that a participant may have with any one eligible mutual fund. If the participant s Fund-Serv debits with each

[4] At this time, MCC will not offer Fund/Serv services to mutual fund processing agents. Thus, all mutual fund participants in Fund/Serv are NSCC Fund members.

[5] NSCC received permanent approval to operate its Fund/Serv service in Securities Exchange Act Release No. 34–25146 (November 20, 1987), 52 FR 45418.

[6] Although MCC's proposal creates a new category of membership, Fund/Serv-only participants, MCC has no immediate plans to admit any Fund/Serv-only members. It is the Commission's understanding, however, that MCC will submit appropriate membership standards to the Commission as a proposed rule change prior to admitting any Fund/Serv-only members.

[7] Broker-dealers may submit trades, on an exception basis, until 11:00 p.m. if operational or communication difficulties prevent timely data entry. According to NSCC, however, no Fund/Serv participant has ever submitted information this late because broker-dealers want to submit their orders before the end of the mutual funds processing day

[8] A mutual fund can not complete redemptions involving physical shares until it receives the share certificates related to the transactions submitted with proper endorsements and guarantees. Therefore the transaction information is retained in the system, but settlement is delayed until the mutual fund receives those physical share certificates.

[9] NSCC pays its mutual fund participants by 1.30 p.m. NSCC pays its broker-dealer participants located in New York between 4:00 and 7:00 p.m. and pays its broker-dealer participants located outside New York between 3:00 and 5:00 p.m.

[10] The MCC-NSCC Mutual Fund Settlement, Entry and Registration Verification Linkage Agreement states that it MCC notifies NSCC by 10:00 a.m. (E.S.T.) on settlement day that it has ceased to act for an MCC participant that MCC's liability shall be limited to the portion of the defaulting Fund member's clearing fund contribution attributable to Fund/Serv. If MCC notifies NSCC later than 10:00 a.m. (E.S.T.) on settlement day, and NSCC can not reverse the transaction MCC shall pay NSCC all amounts due resulting from the defaulting participant's Fund/Serv use.

[11] As noted above, Fund/Serv payment obligations are not guaranteed by MCC or NSCC. According, if a mutual fund defaulted on payment obligations to NSCC, MCC can refuse to pay its affected members.

mutual fund are less than $100,000, then the participant must contribute $5,000 to the Fund/Serv clearing fund; if the participant's Fund/Serv debits with each mutual fund are less than $500,000, then the participant must contribute $10,000 to the Fund/Serv clearing fund; and if the participant's Fund/Serv debits with any one mutual fund are greater than $500,000, then the participant must contribute $20,000 to the Fund-Serv clearing fund. If on any given day a MCC participant's Fund/Serv debits for any one mutual fund exceed the point at which a higher clearing fund contribution is required, that participant must increase his contribution level accordingly.

II. MCC's Rationale

MCC believes the proposal is consistent with section 17A of the Act because it promotes the prompt and accurate clearance and settlement of mutual fund transactions by providing its members with a standardized method of communicating trade information to mutual funds. MCC believes that Fund/Serv's automated processing system is more efficient than the current methods used by its participants. MCC also believes that it has established appropriate risk management procedures, such as monitoring participants' activity, requiring additional clearing fund contributions when necessary, and limiting participants' activity, to protect itself from the potential risks associated with Fund/Serv activity.

III. Discussion

The Commission preliminarily believes that the proposal is consistent with section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of mutual fund transactions. MCC plans to offer Fund/Serv through the Fund/Serv facilities at NSCC.[12] MCC's Fund/Serv is designed to extend to MCC participants the benefits of a centralized automated processing system for mutual fund purchases and redemptions. This service facilitates the prompt and accurate clearance and settlement of mutual fund transactions by allowing mutual fund purchase and redemption information to be submitted in one standardized format to one central location, instead of submitting such information in different formats to each mutual fund.

MCC's proposed clearing fund requirement for Fund/Serv is based upon an individual member's activity lever in Fund/Serv and upon the fact that Fund/Serv is not a guaranteed service. MCC's clearing fund requirements are the same as NSCC's clearing fund requirements for Fund/Serv participants.[13] Specifically, the clearing fund deposits are designed to protect MCC from risk associated with Fund/Serv, including the risk of simultaneous defaults by a MCC participant and a NSCC mutual fund participant. NSCC can withhold payment and reverse any transactions to its mutual funds made by the defaulting MCC particpant if it receives notice of a default from MCC by 3:00 p.m., the time NSCC pays its Fund/Serv participants. From 3:00 p.m. until approximately 8:00 a.m. the next day, NSCC could place a stop payment on any funds paid to any mutual fund as a result of transaction by a MCC defaulting participant. Once NSCC participants have received their funds, NSCC could charge those mutual funds that received payment on transaction by defaulting MCC participants and, absent a default of a NSCC mutual fund participant, should be able to recover such funds. Obviously, MCC must notify NSCC as early as possible of a MCC participant's default in order for NSCC and MCC to avoid or minimize their potential financial exposure.

The Commission is approving MCC's proposal for approximately three months in order to permit MCC, NSCC and Commission staff to evaluate the system and financial safeguards and the adequacy of operational arrangements related to this service. Thus, the Commission expects MCC to monitor member Fund/Serv settlement activity, and report on activity levels and any problems encountered during the temporary approval period. Specifically, the Commission directs MCC to report any decision to suspend an MCC member's payment obligations, the dollar amount of suspended obligations, when those obligations were paid, the amount of funds in the particpant's clearing fund, and whether MCC sustained any losses as a result of any late payments of defaults.

NSCC has developed and operated Fund/Serv since the pilot program began in February 1986, with no significant operational problems.[14] Extending the benefits of Fund/Serv to MCC participants will help achieve the Act's goal to facilitate the establishment of a safe, efficient, and equitable national clearance and settlement system for mutual fund transactions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-MCC-87-05 and SR-MCC-87-07) be, and hereby are, approved on a temporary basis through January 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25065 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

[12] NSCC received permanent approval to operate its Fund/Serv service in Securities Exchange Act Release No. 34-25148 (November 20, 1987), 52 FR 45418 (November 27, 1987).

[13] NSCC's Fund/Serv clearing fund requirements were approve on a temporary basis until November 30, 1988. *See* Securities Exchange Act Release Nos. 25290 (January 26, 1988), 53 FR 3101, 25861 (June 28, 1988), 53 FR 28486, 26146 (September 30, 1988) 53 FR 39565.

[14] Securities Exchange Act Release No. 22928 (February 20, 1986), 51 FR 6045.

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 24, 1988.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Albany International Corp.
Class A Common Stock, $0.001 Par Value (File No. 7-3948)

Atomos Energy Corp.[1]
Common Stock, No Par Value (File No. 7-3949)

Cyprus Minerals Co.
$3.75 Conver. Exch. Pfd. Stock Series B, $1.00 Par Value (File No. 3950)

Dresher Inc.
Common Stock, $.01 Par Value (File No. 7-3951)

FAI Insurances, Ltd.
American Depositary Shares, No Par Value (File No. 7-3952)

Sun Exploration and Production Company
Common Stock, $1.00 Par Value (File No. 7-3953)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

[1] Atomos Energy Corp. was formerly named Energas Co.

Interested persons are invited to submit on or before November 14,1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25066 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26214; File No. SR-NASD-88-30]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendment to Definition of Qualified Independent Underwriter

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 13, 1988, and amended on September 30, 1988,[1] a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends the definition of the term qualified independent underwriter in section 2(1) of Schedule E to the NASD By-Laws.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25997, August 15, 1988) and by publication in the **Federal Register** (53 FR 31786, August 19, 1988).

One comment letter was received on the proposed rule change. The commentator objected to a variety of aspects of the proposal.[2] First, the commentator argues that there has been no wide-spread abuse by firms currently eligible to act as qualified independent underwriters so as to justify the proposed modifications.

Second, the commentator contends that the proposed disqualification of a broker-dealer from serving as a qualified independent underwriter based on findings by self-regulatory organizations and state regulatory bodies of violations of state or federal anti-fraud laws in connection with the distribution of a registered or unregistered offering of securities is inappropriate.[3] In any event, the commentator also argues that requiring firms to seek exemptive relief from the so-called "bad boy" provisions from a committee of the Board of Governors would cause undue delay and increase costs.

Third, the commentator objects to the 5% or more beneficial ownership prohibition in the proposed rule change that would prevent a firm from acting as a qualified independent underwriter in an offering, while allowing the same firm to act as managing lead underwriter in the same offering if the firm owned under 10% of the entity making the offering. The comment letter suggests that merely disclosing ownership would suffice.

finally, the commentator argues that the proposed rule change will restrict competition by limiting the number of firms eligible to be qualified independent underwriters under Schedule E. Large diversified firms (such as those affiliated with insurance companies, which routinely invest in such securities) could be disqualified based on the holdings.

The Commission has considered carefully the arguments raised by the adverse commentator. Nevertheless, the Commission has concluded that the proposals are rationally related to furthering the purposes of Schedule E and are consistent with the Act. Specifically, Schedule E is prophylactic in nature and intended to address prospectively conflicts of interests that may arise when an affiliated entity is involved in both pricing and underwriting an issue of securities.[4] To that end, the Commission believes it is appropriate for the NASD to seek to identify instances that may create the potential for abuse or the appearance of a conflict even in the absence of demonstrated abuses. In this regard, while the so-called "bad boy" provisions are broad, we believe the exemptive process provides an appropriate forum for reviewing their specific application and is not unduly burdensome. Finally, the fact that some firms have structured their business operations such that these conflicts may arise more frequently is not a reason for exempting those firms from the provisions of Schedule E. Moreover, disclosure alone would not cure the conflict; rather, one purpose of Schedule E is to ensure that the pricing of securities offerings is not tainted by the appearance of conflict.

The Commission, therefore, has determined to approve the proposed rule change based on its belief that the NASD has carefully and narrowly tailored the amendments to more fully achieve the central purpose of Schedule E, which is to address the conflicts of interest that are present in a public distribution by a member of its own securities or those of an affiliate. It does so, in part, by requiring the participation of a qualified independent underwriter in the due diligence and pricing aspects of certain offerings. The proposed rule change is an attempt by the NASD to more fully define the qualifications of such an underwriter by specifying the type of experience, the disciplinary history and equity ownership restrictions deemed necessary. The Commission is satisfied that these amendments to Schedule E will clarify the importance of the high standards to which a qualified independent underwriter should be held.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved. Pursuant to the above-mentioned amendment filed by the NASD, the proposed rule change will become effective on December 1, 1988. On and after that date, any public offering of securities subject to compliance with Schedule E to the NASD By-Laws must comply with the proposed rule change if the offering has not been declared effective prior to December 1, 1988, regardless of whether the offering previously was filed with and reviewed by the Corporate Financing Department of the NASD and that Department has already issued an opinion of "no objections" to the

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[1] The amendment relates only to the date of effectiveness of the proposed rule change.

[2] Letter from John E. Frary, Senior Vice President and Special Counsel, Prudential-Bache Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated September 19, 1988.

[3] Under the proposed rule change, disqualification also can be based on state or federal court and Commission actions.

[4] *See* the NASD's statement of the purpose of the proposed rule change in the notice of filing in Securities Exchange Act Release No. 25997, August 15, 1988; 53 FR 31786, August 19, 1988.

proposed underwriting terms and arrangements.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: October 24, 1988.

[FR Doc. 88-25069 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26215; File No. SR-NASD-88-20]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Reporting of Trade Data

The National Association of Securities Dealers, Inc. ("NASD") submitted on June 20, 1988, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder to amend Article VII, section 1 of the NASD By-Laws to require members to provide the NASD with comparison and other trade data that may be required by the Board of Governors ("Board").

In its filing, the NASD states that the purpose of the proposed rule change is to clarify the authority of the Board to mandate trade reporting by members, which will facilitate the prompt and accurate clearance and settlement of securities transactions and will better enable the NASD to carry out its surveillance of the over-the-counter ("OTC") market. Such authority will be used in implementation of the rule change recently approved by the Commission that requires all NASD members that are participants in registered clearing agencies for purposes of clearance of OTC securities transactions to participate in and reconcile eligible transactions through the facilities of the NASD's Trade Acceptance and Reconciliation Service ("TARS").[3] The NASD also intends to use the proposed rule change to facilitate a planned expansion of that requirement that will mandate that all NASD members conducting an interdealer business in OTC securities submit trade reconciliation data as required by the NASD. The expansion would affect those NASD members that are not participants in a registered clearing agency.[4] In addition, the proposed rule change is intended to clarify the NASD's authority to require reporting of trade data, including aggregate volume information, on non-NASDAQ OTC transactions, which will facilitate the gathering of data on these transactions and the increased surveillance of the non-NASDAQ marketplace that has been requested by the Commission.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25915, July 14, 1988) and by publication in the **Federal Register** (53 FR 27588, July 21, 1988).

One comment letter was received on the proposed rule change.[5] In its letter, The International Stock Exchange ("ISE") expresses its concern that the main purpose of the proposal is to provide the NASD with the authority to implement ACT, an automated post-execution service that the NASD has not yet submitted to the Commission for approval. To the extent that the ISE letter addresses ACT in connection with the current proposed rule change, its comments are premature. Should the NASD file a proposed rule change under section 19(b)(2) seeking to implement ACT, the ISE will have an opportunity to comment at that time.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25124 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 24, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Borman's Incorporated

Common Stock, $1 Par Value (File No. 7-3954)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 14, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-25067 Filed 10-28-88; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] *See* Securities Exchange Act Release No. 25595, April 18, 1988, 53 FR 13370.

[4] The NASD indicates that the expansion is in the planning stage of development. In implementing it, the NASD states that it will look for the most cost effective methods to ensure full participation by the broaker-dealer community. The NASD has informed the Commission that current plans call for requiring the use of the Automated Confirmation Transaction ("ACT") service, which will lock in transactions and automate much of the post execution process. Moreover, the Commission notes that the current rule change merely provides enabling authority to the NASD and that prior to the implementation of the expansion the NASD must file a proposed rule change with the Commission pursuant to section 19(b)(2) of the Act.

[5] Letter from M.F. Newman, Director, Service Division, The International Stock Exchange, London, England, to Richard Ketchum, Director, Division of Market Regulation, SEC, August 19, 1988.

[6] The ISE letter also requests assurances from the Commission that certain clearance and settlement services will continue to be available and that the United States broker-dealer community will continue to support those services. Although the Commission would expect the NASD to give due consideration to the effects of its proposals on the broker-dealer community, specific assurances that particular programs will continue indefinitely or that the U.S. broker-dealer community will support such programs are beyond the scope of the Act and, in particular, section 19(b)(2).

[File No. 22-18857]

Application and Opportunity for Hearing; Piedmont Aviation, Inc.

October 25, 1988.

Notice is hereby given that Piedmont Aviation, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 as amended (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under eleven indentures between the Company and the Bank, two dated as of November 1, 1988 relating to the 1988 Equipment Trust Certificates, Series J and K, ("November Indendures") and two dated as of October 15, 1988 relating to the 1988 Equipment Trust Certificates, Series H and I (the "October Indentures"), each of which have been submitted for qualification under the Act and four dated as of September 15, 1988 (the "September Indentures") and three dated as of March 1, 1988 (the "March Indentures"), each of which were heretofore qualified under the Act (Collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of the Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the November Indenture, the Company will issue $44,800,000 aggregate principal amount of its Equipment Trust Certificates (the "November Certificates"), Series J and K (the "November Series"), respectively. Pursuant to the October Indentures, the Company will issue (or will have issued) $44,800,000 aggregated principal amount of its Equipment Trust Certificates (the "October Certificates"), Series H and I (the "October Series"), respectively. Each November Series will be issued, each under a November Indenture, in the principl amount of $22,400,000. Each October Series will be issued, each under an October Indenture, in the principal amount of $22,400,000. The November and October Certificates will be registered under the Securities Act of 1933 (the "1933 Act"), and the November and October Indentures will be qualified under the Act.

(2) Pursuant to the September Indentures, the Company has issued $89,600,000 aggregate principal amount of its Equipment Trust Certificates, (the "September Certificates"), Series D–G (the "September Series"). Each of Series D, E, F and G was issued, each under a September Indenture, in the principal amount of $22,400,000. The September Certificates were registered under the 1933 Act and the September Indentures were qualified under the Act.

(3) Pursuant to the March Indentures, the Company has issued $58,851,000 aggregate principal amount of its Equipment Trust Certificates (the "March Certificates"), Series A–C (the "March Series"). Each of Series A, B and C was issued, each under a March Indenture, in the principal amount of $19,617,000. The March Certificates were registered under the 1933 Act and the March Indentures were qualified under the Act.

(4) There is no default under any of the Indentures.

(5) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property.

(6) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The Company waives notice of hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22–18857, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than November 21, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25122 Filed 10–28–88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-18856]

Application and Opportunity for Hearing; Piedmont Aviation, Inc.

October 25, 1988.

Notice is hereby given that Piedmont Aviation, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 as amended (the "Act") for a finding by the Securities and exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under eleven indentures between the Company and the Bank, two dated as of October 15, 1988 relating to the 1988 Equipment Trust Certificates, Series H and I, ("October Indentures") and two dated as of November 1, 1988 relating to the 1988 Equipment Trust Certificates, Series J and K (the "November Indentures"), each of which have been submitted for qualification under the Act and four dated as of September 15, 1988 (the "September Indentures") and three dated as of March 1, 1988 (the "March Indentures"), each of which were heretofore qualified under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of the Indentures.

Section 310(b) of the Act provides in part that if a tustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest, or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified

indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the October Indentures, the Company will issue $44,800,000 aggregate principal amount of its Equipment Trust Certificates (the "October Certificates"), Series H and I (the "October Series"), respectively. Pursuant to the November Indentures, the Company will issue (or will have issued) $44,800,000 aggregate principal amount of its Equipment Trust Certificates (the "November Certificates"), Series J and K (the "November Series"), respectively. Each October Series will be issued, each under an October Indenture, in the principal amount of $22,400,000. Each November Series will be issued, each under a November indenture, in the principal amount of $22,400,000. The October and November Certificates will be registered under the Secutities Act of 1933 (The "1933 Act"), and the October and November Indentures will be qualified under the Act.

(2) Pursuant to the September Indentures, the Company has issued $89,600,000 aggregate principal amount of its Equipment Trust Certificates (the "September Certificates"), Series D–G (the "September Series"). Each of Series D, E, F and G was issued, each under a September Indenture, in the principal amount of $22,400,000. The September Certificates were registered under the 1933 Act and the September Indentures were qualified under the Act.

(3) Pursuant to the March Indentures, the Company has issued $58,851,000 aggregate principal amount of its Equipment Trust Certificates (the "March Certificates"), Series A–C (the "March Series"). Each of Series A, B and C was issued, each under a March Indenture, in the principal amount of $19,617,000. The March Certificates were registered under the 1933 Act and the March Indentures were qualified under the Act.

(4) There is no default under any of the Indentures.

(5) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property.

(6) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The Company waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22–18856, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than November 21, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–25123 Filed 10–28–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/05–0011]

Vicksburg Small Business Investment Co.; Surrender of License

Notice is hereby given that Vicksburg Small Business Investment Company (VSBIC), 302 First National Bank Building, Vicksburg, Mississippi 39180, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). VSBIC was licensed by the Small Business Administration on June 9, 1960.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on October 5, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: October 19, 1988.

[FR Doc. 88–25063 Filed 10–28–88; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0523]

Carnegie Hill Capital Fund, L.P.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Carnegie Hill Capital Fund, L.P., 730 Fifth Avenue, Suite 20004, New York, New York 10019 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The corporate general partner of the Applicant is Carnegie Hill Three Corporations, a Deleware corporation, located at 730 Fifth Avenue, New York, New York, 10019, and is wholly owned by Mr. Dale Krieger, 110 Riverside Drive, New York, New York 10024. The Sole limited Partner of the Applicant is Carnegie Hill Partners, L.P., a Delaware limited partnership, located at 730 Fifth Avenue, New York, New York 10019. No person owns a 10 or more percent equity interest in Carnegie Hill Partners, L.P.

The Investment adviser/Manager of the Applicant will be Carnegie Hill Company, a New York limited partnership, located at 730 Fifth Avenue, New York, New York 10019, which has as its managing general partner Carnegie Hill One Corporation. A Delaware Corporation, located at 730 Fifth Avenue, New York, New York 10019 and includes two other general partners, Richard A. Ruderman, 12 Soxony Way, New Rochelle, New York 10804 and Charles C. West, 413 Waldo Boulevard, Manitowoc, Wisconsin 54220.

The limited partners of the Carnegie Hill Company are Veronica K. Krieger, 110 Riverside Drive, New York, New York 10024 and three trusts for the minor children of Dale and Veronica Krieger of which Veronica Krieger is the Trustee.

The Applicant will begin operations with $1,262,625 paid-in capital and paid-in surplus. The applicant will conduct its activities primarily in the State of New York, Wisconsin and Minnesota, but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed benefical owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant. Any such communciation should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Adminstrator for Investment.

Dated: October 24, 1988.

[FR Doc. 88-25064 Filed 10-28-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1229]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on November 16, 1988 in Room 535, 1919 M Street, NW., Washington, DC (Federal Communications Commission) at 9:30 a.m.

Study Group 9 deals with questions relating to line-of-sight and trans-horizon radio-relay systems operating via terrestrial stations at frequencies above about 30 MHz. The purpose of the meeting is to review preparations for the Final Meeting of Study Group 9 set for October 1989.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Date: October 11, 1988.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 88-25029 Filed 10-28-88; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1233]

U.S. Organization for the International Consultative Committees on Radio and Telegraph and Telephone; Joint Meeting

The Department of State announces that there will be a joint meeting of the National Committees of the U.S. Organization for the International Radio Consultative Committee (CCIR) and the International Telegraph and Telephone Consultative Committee (CCITT) on November 2, 1988 in Room 10A/B at 1120 20th Street, NW., Washington, DC. The meeting will begin at 10:00 a.m. and continue until approximately 4:30 p.m. This notice does not meet the 15-day notice requirement, since there is an urgent need to hold the meeting prior to departure on extended travel of key participants in connection with U.S. delegation duties overseas.

The National Committees provide advice on matters of policy and positions in preparation for the respective Plenary Assemblies and international Study Groups meetings, as well as on a broad range of matters relating to the International Telecommunication Union (ITU) in general. The ITU will convene a Plenipotentiary Conference in May, 1989 which will consider issues of considerable interest to U.S. CCIR and CCITT participants.

The main purposes of the meeting will be to:

1. Report on national preparations for the Plenipotentiary;

2. Discussion of specific issues of interest to the CCIs;

3. Consideration of future activities.

Members of the general public may attend the meeting and join in discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. All persons wishing to attend the meeting should contact the office of Early Barbely, telephone (202) 647-5220. All attendees will be required to sign in and obtain badges for entrance to the building. This will be handled in the lobby reception ara.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

Date: October 24, 1988.

[FR Doc. 88-25030 Filed 10-27-88; 12:59 pm]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 21, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45887

Date Filed: October 30, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 17, 1988.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 130 in order to provide round-trip foreign air transportation of passengers, property and mail between the United States and Australia via Japan.

Docket No. 44992

Date Filed: October 18, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 15, 1988.

Description: Amendment to the Application of "Faucett" requests a permit to conduce a total of three weekly round trip combination passenger, property and mail flights between Lima, Peru and Miami, Florida (twice weekly) and between Iquitos, Peru and Miami, Florida (once weekly), pursuant to the terms of the Bilateral

Agreement between Peru and the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-25121 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Danbury Municipal Airport, Danbury, CT; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Danbury, Connecticut under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On February 24, 1988, the FAA determined that the noise exposure maps submitted by the city of Danbury, Connecticut under Part 150, were in compliance with applicable requirements. On August 22, 1988, the Administrator approved the Danbury Municipal Airport (DXR) noise compatibility program. Out of the 12 proposed program elements, 9 were approved and 1 was partially approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the DXR noise compatibility program is August 22, 1988.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-610, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273-7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the DXR noise compatibility program, effective August 22, 1988.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compativility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not cereate an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The city of Danbury submitted to the FAA, on July 9, 1987, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 1985 through July 1987. The DXR noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 24, 1988. Notice of this determination was published in the **Federal Register** on March 21, 1988.

The DXR study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 24, 1988, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180 day period shall be deemed to be an approval of such a program.

The submitted program contained 12 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the administrator effective August 22, 1988.

Approval was granted for 9 specific program elements. Airport Operations Measure 3, concerning the prohibition of nighttime touch-and-go activity by non-based aircraft was approved in part—that part which permits touch-and-go operations by based aircraft by removing the existing restriction on these aircraft. That part of the measure which prohibits nighttime touch-and-go activity by non-based aircraft, by continuing in force the existing restriction, was disapproved, on the basis that it is not based on the relative noisiness of specific aircraft, favors based airport users over non-based airport users without regard to noise, and is, therefore, unjustly discriminatory. The effect of the disapproval is negligible, however, since

almost no non-based aircraft use the airport at night for touch-and-gos.

Airport Operations Measure 4, concerning prohibition of intersection and formation takeoffs was disapproved as a noise abatement proposal because there was no noise benefit supported by the study.

Finally, Land Use Control Measure 1, concerning acquisition of property rights within the Runway 08 clear zone and airport primary surface, was disapproved only because the parcels do not fall within the Ldn 65 noise contour and are thus not considered *noise* incompatible.

The approved program for Danbury includes raising the traffice pattern altitude, increasing the use of Runway 17 and decreasing the use of Runway 26, removing restrictions on touch-and-go activity, including the Airport Administrator in the land use review process, revision of the Danbury multi-family overlay district, simplification and standardization of noise complaint procedures, continuation of a Citizens' Advisory Committee, annual evaluations of changes in the noise environment, and program publicity.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 22, 1988. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the office of the Airport Administrator, Danbury, Connecticut.

Issued in Burlington, Massachusetts, on October 12, 1988.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 88-25043 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review Enhancement Advisory Committee; Termination

Notice is hereby given of the termination of the National Airspace Review Enhancement Advisory Committee. The committee was established to provide the Administrator with independent, expert advice on the operational aspects of transition into the next generation National Airspace System (NAS) and to assist FAA in identifying and implementing changes to the current and future NAS. This committee has been terminated as its continuation is no longer in the public interest in connection with the performance of duties imposed on FAA by law.

Issued in Washington, DC, on October 19, 1988.

Michael L. Evans,

Acting Director of Management Systems.

[FR Doc. 88-25042 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Service Station at Cincinnati Municipal Airport, Lunken Field, Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on October 4, 1988, the Flight Service Station (FSS) at Cincinnati, Lunken Field, Cincinnati, Ohio closed. Services to the aviation public in the Cincinnati flight plan area, formerly provided by the Cincinnati, FSS will be provided by the new Automated Flight Service Station at Dayton, Ohio. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 49 U.S.C. 1354.)

Timothy P. Forté,

Regional Administrator, Great Lakes Region.

Issued in Des Plaines, Illinois, on October 11, 1988.

[FR Doc. 88-25041 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-13-M

Federal Service Station at Dickinson Municipal Airport, Dickinson, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on October 18, 1988, the Flight Service Station (FSS) at Dickinson Municipal Airport, Dickinson, North Dakota was closed. Services to the aviation public in the Dickinson flight plan area, formerly provided by the Dickinson FSS, will be provided by the new automated flight service station at Grand Forks, North Dakota. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Timothy P. Forté,

Regional Administrator, Great Lakes Region.

Issued in Des Plaines, Illinois, on October 18, 1988.

[FR Doc. 88-25040 Filed 10-28-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 25, 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: 1545-0794.

Form Number: None.

Type of Review: Extension.

Title: Penalties for Underpayment of Deposits and Overstated Deposit Claims, and Time of Filing Information Returns of Owners, Officers and Directors of Foreign Corporations (LR-311-81 (T.D. 7925)).

Description: Section 6046 requires information returns with respect to certain foreign corporations and the regulations provide the date by which these returns must be filed. Section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations and the regulations provide the method for applying for relief from these penalties.

Respondents: Individuals or households, Businesses or other for-profit, and Small businesses or organizations.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 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. 88-25045 Filed 10-28-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: As required by law the Veterans Administration (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1988. The VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in fiscal year 1989 which began on October 1, 1988.

DATES: These COLAs are effective December 1, 1988. The headstone or marker allowance rate is effective October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and section 306 of Pub. L. 95-588 the VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register.**

The Social Security Administration has announced that there will be a 4.0 percent cost-of-living increase in social security benefits effective December 1, 1988. Therefore, applying the same percentage, the following increased rates and income limitations for the VA's pension and parents' DIC programs will be effective December 1, 1988.

Improved Pension

Table 1

Maximum Annual Rates

(1) Veterans permanently and totally disabled (38 U.S.C. 521).
Veteran with no dependents, *$6,463.*
Veteran with one dependent, *$8,466.*
For each additional dependent, *$1,098.*

(2) Veterans in need of aid and attendance (38 U.S.C. 521).
Veteran with no dependents, *$10,338.*
Veteran with one dependent, *$12,341.*
For each additional dependent, *$1,098.*

(3) Veterans who are housebound (38 U.S.C. 521).
Veteran with no dependents, *$7,899.*
Veteran with one dependent, *$9,902.*
For each additional dependent, *$1,098.*

(4) Two veterans married to one another; combined rates (38 U.S.C. 521).
Neither veteran in need of aid and attendance or housebound, *$8,466.*
Either veteran in need of aid and attendance, *$12,341.*
Both veterans in need of aid and attendance, *$16,214.*
Either veteran housebound, *$9,902.*
Both veterans housebound; *$11,340.*
One veteran housebound and one veteran in need of aid and attendance, *$13,776.*
For each dependent child, *$1,098.*

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).
Surviving spouse alone, *$4,331.*
Surviving spouse and one child in his or her custody, *$5,674.*
For each additional child in his or her custody, *$1,098.*

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 541).
Surviving spouse alone, *$6,928.*
Surviving spouse with one child in his or her custody, *$8,267.*
For each additional child in his or her custody, *$1,098.*

(7) Surviving spouses who are housebound (38 U.S.C. 541).
Surviving spouse alone, *$5,295.*
Surviving spouse and one child in his or her custody, *$6,635.*
For each additional child in his or her custody, *$1,098.*

(8) Surviving child alone (38 U.S.C. 542), *$1,098.*

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,461. (38 U.S.C. 521(g)).

Parents' DIC

DIC (dependency and indemnity compensation) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415)

Table 2

One parent. If there is only one parent the monthly rate of DIC paid to such parent shall be $303 reduced on the basis of the parent's annual income according to the following formula:

For each $1 of annual income		
The $303 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	$7,351

No DIC is payable under this table if annual income exceeds $7,351.

One Parent Who Has Remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under table 2 or under table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $217 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $217 monthly rate shall be reduced by—	Which is more than—	But not more than—
0	0	$800
$0.05	$800	900
.07	900	1,100
.08	1,100	7,351

No DIC is payable under this table if annual income exceeds $7,351.

Two parents living together or remarried parents living with spouses. The rates in table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $204 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $204 monthly rate shall be reduced by—	Which is more than—	But not more than—
0	0	$1,000
$0.03	$1,000	1,600
.04	1,600	2,000
.05	2,000	2,500
.06	2,500	3,000
.07	3,000	3,300
.08	3,300	9,885

No DIC is payable under this table if combined annual income exceeds $9,885.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under tables 2 through 4 shall be increased by $161 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under tables 2 through 4 shall not be less than $5.

Section 306 Pension Income Limitations

Table 5

(1) Veteran or surviving spouse with no dependents, $7,351 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $7,851 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $9,885 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $10,385 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran of surviving spouse), $6,008 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,343 (Pub. L. 95–588, section 306(a)(2)(B)).

Old-Law Pension Income Limitations

Table 6

(1) Veteran or surviving spouse without dependents or an entitled child, $6,435 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $9,279 (Pub. L. 95–588, section 306(b)).

Headstone or Marker Allowance

Under 38 U.S.C. 906(d) the VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceeding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones or markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for fiscal year 1988 under the above computation method was $80. Therefore, effective October 1, 1988, the maximum rate of reimbursement for non-Government headstones or markers purchased during fiscal year 1989 is $80.

Dated: October 25, 1988.

Thomas K. Tutnage,

Administrator.

[FR Doc. 88–25092 Filed 10–28–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 210
Monday, October 31, 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).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.–12:00 p.m.

PLACE: African Development Foundation.

DATE: Monday, November 7, 1988.

STATUS: Open.

Agenda

1. Chairman's Report
2. President's Report
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Ms. Janis McCollim, 673–3916.

Leonard H. Robinson, Jr.,
President.

[FR Doc. 88–25201 Filed 10–27–88; 3:14 pm]
BILLING CODE 6116–01–M

FARM CREDIT ADMINISTRATION

Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board is scheduled for November 1, 1988.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administrative in McLean, Virginia, on November 1, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Summary Prior Approval Items;
2. Farm Credit Administration Budget Fiscal Year 1990;
3. Task Force Report on Institution Mergers;

Closed Session [1]

4. Examination and Enforcement Matters; and
5. Jackson FLB/FLBA, in Receivership.

Dated: October 26, 1988.

David A. Hill,
Secretary, Farm Credit Administration Board.

[FR Doc. 88–25192 Filed 10–27–88; 3:14 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:06 p.m. on Tuesday, October 25, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) The possible closing of certain insured banks; (2) assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Directive Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 26, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 88–25129 Filed 10–26–88; 4:55 pm]
BILLING CODE 6714–01–M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 24, 1988, 53 FR 41645.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 26, 1988, 10 p.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to the agenda of October 26, 1988:

Item No., Docket No., and Company

CAG–12
RP88–27–000, United Gas Pipe Line Company
CAG–52
CP87–309–004 and 005, Paiute Pipeline Company
CAG–77(A)
CP87–92–000, 001, 002 and CP87–312–000, Texas Eastern Transmission Corporation and PennEast Gas Services Company
CP87–312–003, Texas Eastern Transmission Corporation
CP66–43–001 and CP88–179–000, Texas Eastern Transmission Corporation
CP88–388–000 and CP88–197–000, PennEast Gas Services Company
CP87–380–000, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
CP88–177–000, Transcontinental Gas Pipe Line Corporation
CP87–5–000, CP87–313–000 and CP87–314–000, CNG Transmission Corporation
CP87–554–000, CP88–186–000, CP88–187–000 and
CP88–192–000, Algonquin Gas Transmission Company
CP88–195–000, PennEast Gas Service Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
CP88–171–000, Tennessee Gas Pipeline Company

Lois D. Cashell,
Secretary.

[FR Doc. 88–25128 Filed 10–26–88; 4:55 pm]
BILLING CODE 6717–02–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. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, November 7, 1988, in Washington, DC, and at 8:30 a.m. on Tuesday, November 8, 1988, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The

November 7 meeting, at which the Board will consider a proposal for procurement of an existing building in New York City, is closed to the public. The November 8 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.

Monday Session

November 7—1:00 p.m.

1. Consideration of Procurement of Existing Building in New York City. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)

Tuesday Session

November 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 3–4, 1988.
2. Remarks of the Postmaster General.
3. Board of Governors 1989 Meeting Schedule.
4. Report on Compliance with the Budget Reconciliation Act of 1987. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group.)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
6. Report on Administrative Services Group Programs. (Mitchell H. Gordon, Senior Assistant Postmaster General, Administrative Services Group)
7. Report on Human Resources Group Programs. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group)
8. Report on Long-Life Vehicles. (John J. Davin, Assistant Postmaster General, Procurement and Supply Department)
9. Capital Investments. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Advanced Facer-Canceler System. (Warren P. Denise, Acting Assistant Postmaster General, Engineering and Technical Support Department)
   b. South Suburban, Illinois, General Mail Facility.
   c. Southwest Suburban, Illinois, Mail Processing Center.
   d. Chicago, Illinois, Bulk Mail Center Expansion.
10. Tentative Agenda for December 5–6, 1988, Meeting in Tampa, Florida.

David F. Harris,

Secretary.

[FR Doc. 88–25229 Filed 10–27–88; 3:15 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE

Board of Governors; Notice of Vote To Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for November 7, 1988, at United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting will involve consideration of a proposal for procurement of an existing building in New York, New York.

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Nevin, Pace, 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 § 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 § 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 § 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. 88–25230 Filed 10–27–88; 3:15 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [53 FR 41648 October 24, 1988].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED: Wednesday, October 19, 1988.

CHANGE IN THE MEETING: Additional item.

The following item was considered at a closed meeting on Tuesday, October 25, 1988, following the 10:00 a.m. open meeting:

Regulatory matter bearing enforcement implications.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–3195.

Jonathan G. Katz,

Secretary.

October 26, 1988.

[FR Doc. 88–25191 Filed 10–27–88; 3:14 pm]

BILLING CODE 8010–01–M

federal register

Monday
October 31, 1988

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 761, 785, 816, and 817
Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Special Categories of Mining; Surface Mining Activities; Underground Mining Activities; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 761, 785, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Special Categories of Mining; Surface Mining Activities; Underground Mining Activities

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its permanent program regulations in five general subject areas. Except for the subject area of disposal of excess spoil on preexisting benches, the proposed amendments generally respond to U.S. district court and court of appeals decisions.

In the subject area of values incompatible with surface coal mining operations, the rule would amend the definition of *no significant recreational, timber, economic, or other values incompatible with surface coal mining operations* by removing the phrase "beyond an operators ability to repair." This would eliminate reclaimability as a criterion in determining compatibility with surface coal mining operations.

In the subject area of AOC variances, the rule would revise regulations governing permits incorporating variances from AOC restoration requirements to limit their application to steep slope mining.

In the subject area of disposal of excess spoil on preexisting benches, the rule would revise regulations governing the disposal of excess spoil on preexisting benches to conform them with the general requirements for backfilling and grading.

In the subject area of coal mine waste, the rule would revise the general requirements governing the disposal of coal mine waste to add to the existing requirement that it be placed in a controlled manner the additional requirement that it be hauled or conveyed. This addition would prohibit the end or side dumping of coal mine waste. Also in this subject area, the rule would remove regulations requiring the handling of hazardous noncoal mine waste in accordance with the Resource Conservation and Recovery Act and its implementing regulations.

Finally, in the subject area of contemporaneous reclamation/backfilling and grading, the rule would add new regulations reinstituting backfilling and grading time and distance requirements. It would require the completion of backfilling and grading within a certain time or distance following coal removal, or under a schedule established by the regulatory authority. Also in this subject area, the rule would define *thin overburden* and *thick overburden* using general standards relating to the restoration of AOC, and would establish performance standards governing the backfilling and grading of thin and thick overburden.

Any previous suspensions of these and related regulations that would be obviated by these amendments would be removed.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on December 30, 1988.

Public Hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC, Pittsburgh, Pennsylvania, and Denver, Colorado, at 9:30 a.m. local time. The hearing in Washington, DC, will be held on December 19, 1988; in Pittsburgh, Pennsylvania, on December 21, 1988, and in Denver, Colorado on December 23, 1988. If sufficient interest is shown, OSMRE may also hold public hearings in other locations at times and on dates to be announced prior to the hearings.

OSMRE will accept requests for public hearings until 4:30 p.m. Eastern time on November 30, 1988. Individuals wishing to attend but not testify at a hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC; Parkway Center Inn, 875 Greentree Road, Pittsburgh, Pennsylvania; and Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado.

Request for public hearing: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT:

Dermot Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates, and addresses for the scheduled hearings are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**).

Any person interested in participating at a hearing should inform Dermot Winters (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 4:30 p.m. Eastern time on November 30, 1988. If no one has contacted Mr. Winters to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

Section 201(c)(2) of the Surface Mining Control and Reclamation Act of 1977

(SMCRA or the Act), 30 U.S.C. 1211(c)(2), directs the Secretary of the Interior (the Secretary), acting through the Office of Surface Mining Reclamation and Enforcement (OSMRE), to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act." Section 501(b) of the Act, 30 U.S.C. 1251(b), directs the Secretary to "promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations performance standards * * *" The resulting OSMRE regulations are codified at 30 CFR Chapter VII.

This proposed rule concerns five general subject areas in Chapter VII. These subject areas have been grouped together in this combined rule for administrative convenience. The pertinent legislative, regulatory and litigation background of each proposed section in these subject areas is discussed in turn under the following general headings, with the affected sections listed in parentheses.

For convenience, where the discussion concerns similar sections in Part 816, which applies to surface mining activities, and Part 817, which applies to underground mining activities, these sections are cited together in the heading as §§ 816.[ ]/817.[ ], but in most cases only Part 816 is discussed in the text. In such cases the discussion applies equally to Parts 816 and 817 unless otherwise noted.

A. Values Incompatible with Surface Coal Mining Operations (§ 761.5)

Section 522(e)(2) of the Act, 30 U.S.C. 1272(e)(2), with certain exceptions, prohibits surface coal mining operations "on any Federal lands within the boundaries of any national forest [unless] the Secretary finds that there are *no significant recreational, timber, economic, or other values* which may be *incompatible with* such *surface* [*coal*] *mining operations* * * *" (Emphasis added). The corresponding OSMRE permanent program regulation appears at 30 CFR 761.11(b).

In implementing this requirement, the 1979 OSMRE regulations at 30 CFR 761.5 defined the emphasized language in section 522(e)(2) in part to mean: "[T]hose significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. * * *" 44 FR 15341 (March 13, 1979).

On June 10, 1982 (47 FR 25278) OSMRE proposed, and on September 3, 1983 (48 FR 41312) OSMRE promulgated, a rule revising the 1979 definition. The revised definition dropped the introductory term "*no*" as unnecessary, changed the phrase "significant values" to "values to be evaluated for their significance," changed the term "offsite areas which could be affected by mining" to "affected areas," and of particular relevance to this proposed rule, inserted after the word "damage" the phrase "beyond an operator's ability to repair or restore."

Thus, following revision in 1983 the corresponding portion of the definition read: "*Significant recreational, timber, economic, or other values incompatible with surface coal mining operations* means those values to be evaluated for their significance which could be damaged beyond an operator's ability to repair or restore by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas." 30 CFR 761.5 (1983).

This revised definition was challenged by the citizen and environmental plaintiffs in *In re Permanent Surface Mining Regulation Litigation* (*In re Permanent II (Round III)*), 620 F. Supp. 1519 at 1556–57 (D.D.C. July 15, 1985). The challengers contended that the definition was contrary to the Act because under it mining could be permitted in national forests as long as reclamation was possible. The U.S. District Court for the District of Columbia agreed with this contention and remanded the definition. *Id.* at 1557. On November 20, 1986 (51 FR 41952) OSMRE suspended the definition "insofar as the listed values are evaluated for compatibility solely in terms of reclaimability." *Id.* at 41960–41961.

OSMRE appealed, and the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court ruling. *NWF v. Hodel*, No. 84–5743, slip op. at 116–121 (DC Cir. January 29, 1988). Like the district court, the court of appeals ruled that the revised regulation was contrary to the intent of the Congress and to elementary principles of statutory construction.

OSMRE now proposes to revise the § 761.5 definition of *significant recreational, timber, economic, or other values incompatible with surface coal mining operations* in conformance with the district court and court of appeals decisions.

B. AOC Variances (§§ 785.16 and 816.133(d)/817.133(d))

Section 515(b)(3) of the Act, 30 U.S.C. 1265(b)(3), generally requires "all surface coal mining and reclamation operations * * * to * * * compact * * * and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated * * *." For steep slope mining, section 515(d)(2), 30 U.S.C. 1265(d)(2), imposes an additional requirement for "[c]omplete backfilling with spoil material * * * to cover completely the highwall and return the site to the approximate original contour * * *."

The term *approximate original contour* (AOC), as used in these sections, is defined in section 701(2) of the Act, 30 U.S.C. 1291(2), and in the regulations at 30 CFR 701.5. For the text of the definition, which is not essential to an understanding of this portion of the proposed rule, see the subsequent heading, E. Contemporaneous Reclamation/Backfilling and Grading.

Sections 515(e)(1) through (e)(6) of the Act, 30 U.S.C. 1265(e)(1) through (e)(6), allow regulatory authorities to permit variances from AOC under certain circumstances. Section 515(e)(1) allows State regulatory programs, and requires Federal regulatory programs, to include procedures for permitting variances for the purposes set forth in section 515(e)(3). Section 515(e)(2) explicitly allows the regulatory authority to grant a variance from the steep-slope requirement of section 515(d)(2).

Accordingly, on March 13, 1979 (44 FR 15372) OSMRE promulgated at 30 CFR 785.16 a regulation which authorized the regulatory authority to grant a variance from AOC for nonmountaintop removal, steep slope mining. This regulation was challenged by the coal industry in *In re Permanent Surface Mining Regulation Litigation* (*In re Permanent I*), No. 79–1144, slip op. at 69–70 (D.D.C. February 26, 1980), as unduly restrictive.

In upholding the § 785.16 limitation of AOC variances to steep slop mining, the U.S. District Court for the District of Columbia in *In re Permanent I* said: "Section 515(e) of the Act contains one variance provision: it applies to steep slopes. Rather than calling for a general variance mechanism, section 515(e)(1) establishes the right to apply for a variance * * *. Section 515(e)(2) restricts the variance application to the contour restoration requirements of subsection 515(d)(2) (steep slopes). Whatever ambiguity may be read into

section 515 is dispelled upon examination of the legislative history." *Id.* at 69–70.

Subsequently, OSMRE reconsidered the legislative history of the Act and concluded "that the section allowing for AOC variances was not limited to steep slope operations." 48 FR 39900 (September 1, 1983). Accordingly, OSMRE expanded the coverage of § 785.16 to permit variances from AOC on both steep and non-steep slope terrain. 48 FR 39892 (September 1, 1983), as amended at 48 FR 44780 (September 30, 1983). At the same time (48 FR 39892), OSMRE revised its regulations governing postmining land use to include at 30 CFR 816.133(d) criteria for permitting variances in accordance with revised § 785.16. OSMRE set out its rationale for these revisions in a detailed analysis of the legislative history of section 515(e), and of the issues considered by the district court in *In re Permanent I.* 48 FR 39899–900.

These revised regulations were challenged by the citizen and environmental plaintiffs in *In re Permanent II (Round III).* 620 F. Supp. at 1574–1578. In response, the district court remanded the revised regulations "as inconsistent with law to the extent they permit[ted] a variance beyond the variance for steep slopes embodied in section 515(e)(2) [of the Act]." *Id.* at 1577–78.

On November 20, 1986 (51 FR 41952), OSMRE suspended §§ 785.16 and 816.133(d) insofar as they authorized any variance from AOC outside a steep slope area. The district court remand was appealed by the coal industry, and affirmed by the court of appeals in *NWF v. Hodel.* Slip op. at 141–146. In affirming the district court, the court of appeals "rel[ied] on the text of section 515(e)(2), which specifically states that variances may be granted from the AOC requirements of section 515(d)(2), the steep slope mining provision; it does not, as enacted, state that non-steep slope mining AOC requirements may be waived or excused, and neither does it reference section 515(b)(3), the general AOC provision." *Id.* at 145. The court of appeals found nothing in the legislative history that would change its reading of section 515(e). *Id.* at 146.

OSMRE now proposes to revise § 785.16, and to remove the suspension of that section and of §§ 816.133(d) and 817.133(d), in conformance with the district court and court of appeals decisions.

C. Disposal of Excess Spoil on Preexisting Benches (§§ 816.74/817.74)

Section 515(b)(22) of the Act, 30 U.S.C. 1265(b)(22), specifies general performance standards for the placement of excess spoil material resulting from surface coal mining and reclamation activities. Section 516(b)(10) of the Act, 30 U.S.C. 1266(b)(10), authorizes similar performance standards for underground mining activities, with "such modifications as are necessary to accommodate the distinct difference between surface and underground coal mining."

The existing OSMRE permanent program regulations implementing these statutory performance standards appear at 30 CFR 816.71 through 816.74 for surface mining activities. In particular, § 816.74, which is affected by this proposed rule, governs the disposal of excess spoil on preexisting benches.

The original OSMRE permanent program regulations governing the disposal of excess spoil appeared at 30 CFR 816.71 through 816.74 (1979). These 1979 regulations did not provide specifically for the disposal of excess spoil on preexisting benches.

Regulations to allow the disposal of excess spoil on preexisting benches were proposed by OSMRE on May 16, 1980 (45 FR 32331). As a result of public comment, these regulations were reproposed in substantially different form on July 20, 1981 (46 FR 37283). Final regulations at 30 CFR 816.75 were promulgated on April 29, 1982 (46 FR 18553).

On June 8, 1982 (47 FR 24954), as part of an overall revision of its regulations governing the disposal of excess spoil, OSMRE proposed to revise § 816.75. The final revised and renumbered regulations at 30 CFR 816.74 were promulgated on July 29, 1983 (48 FR 32910). Paragraphs (a) through (d) of the revised regulations were essentially the same as the 1982 regulations, and a new paragraph (e) was added to allow in certain circumstances the disposal of excess spoil from an upper actively-mined bench to a lower preexisting bench by means of gravity transport.

In July 1986, OSMRE released for public review and comment the final draft of a study titled, "Encouraging Abandoned Mine Reclamation Via Remining: A Federal, State and Industry Initiative." On September 23, 1986, OSMRE held a public meeting in Washington, DC, to discuss the initiatives identified in this draft study. Copies of the draft study and a transcript of the public meeting have been placed in the administrative record for this rule.

One of the initiatives identified in the draft study and discussed at the public meeting was "Reclaiming Abandoned Mine Lands with Excess Spoil." A sub-issue within this initiative was the disposal of excess spoil on preexisting benches, and, particularly, whether the requirements for such disposal were excessive as compared to the general requirements for backfilling and grading. Both in written comments and orally at the public meeting, commenters pointed out that the differences in these requirements were inconsistent with the similar geologic and engineering characteristics of preexisting and active-mining benches.

In response to these comments, OSMRE proposes to revise §§ 816.74/817.74 to conform their requirements for disposal of excess spoil on preexisting benches with the backfilling and grading requirements of §§ 816.102/817.102.

D. Coal Mine Waste (§§ 816.81/817.81 and 816.89/817.89)

Recognizing the problems posed by improper disposal of coal waste, the Congress included in the Act a number of performance standards governing waste disposal. These performance standards appear in section 515 of the Act, 30 U.S.C. 1265, for surface mining activities, and in section 516 of the Act, 30 U.S.C. 1266, for underground mining activities.

To implement these statutory performance standards, the 1979 permanent program included at 30 CFR 701.5 a definition of *coal processing waste,* and at 30 CFR 816.81 to 816.93 (44 FR 15395 and 15422 (March 13, 1979)), regulations governing the disposal of coal mine waste. Several changes in the 1979 regulations, which are not otherwise relevant to this discussion but are noted for completeness, were made on August 18, 1980 (45 FR 54753), and on November 20, 1980 (45 FR 76932).

On September 26, 1983 (40 FR 44006) OSMRE promulgated at 30 CFR 701.5 a revised definition of *coal processing waste,* and new definitions of *coal mine waste, impounding structure,* and *refuse pile.* At the same time (40 FR 44006), OSMRE promulgated at 30 CFR 816.81, 816.83, 816.87 and 816.89, a comprehensive revision of the 1979 regulations. These new regulations were challenged in *In re Permanent II (Round III).* 620 F. Supp. at 1534–1538.

In re Permanent II (Round III) involved two coal waste issues that are dealt with by this rule: (1) Controlled transport of coal waste; and (2) Environmental Protection Agency (EPA) regulations on hazardous wastes.

1. Controlled Transport of Coal Waste (§§ 816.81(a)/817.81(a))

In *In re Permanent II (Round III)* the district court rejected §§ 816.81(a)/817.81(a) as arbitrary and capricious to

the extent they allowed end or side dumping of coal, a practice in hilly mining areas of placing material at a disposal site by means of gravity. 620 F. Supp. at 1534–1535.

On November 20, 1986 (51 FR 41952), OSMRE suspended §§ 816.81(a)/817.81(a) insofar as they allowed end or side dumping of coal mine waste. OSMRE now proposes to amend these sections, and to remove their suspension, in conformance with the district court decision.

2. EPA Regulations on Hazardous Wastes (§§ 816.89(d)/817.89(d))

Section 816.89(d) of the 1983 regulations required that "any noncoal mine waste defined as 'hazardous' under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations." 48 FR 44006, 44030 and 44032 (September 26, 1983). As OSMRE noted in the preamble to the final rule, this was done at the suggestion of the U.S. Environmental Protection Agency (EPA). *Id.* at 44027.

In *In re Permanent II (Round III)*, 620 F. Supp. at 1538, the coal industry challenged this section of the regulations, which the district court remanded for lack of adequate notice and comment. The district court said:

"Industry challenges this rule because it contends that Congress gave the Secretary exclusive responsibility to regulate every kind of waste at coal mines in SMCRA permits, and expressly provided that EPA's regulations for hazardous wastes under RCRA shall not be applied to coal mines.

"The court need not spend much time detailing the statutory analysis because it concludes that the rule was promulgated without adequate notice and comment under the APA [(Administrative Procedure Act)] * * *.

"The Secretary * * * did not respond to the Industry's APA challenge, but instead attempted to explain that the rule neither broadens nor diminishes the Secretary's rules on the disposal of noncoal waste. Industry takes a vastly different view of the effect of the regulation, and makes a lengthy argument that has nowhere been considered by the Secretary prior to this litigation. Second, Industry is able to point to legal and practical complications that result from the rules." *Id.*

On November 20, 1986 (51 FR 41952), OSMRE suspended §§ 816.89(d)/817.89(d). OSMRE now proposes to remove these sections from its regulations in conformance with the district court decision.

E. Contemporaneous Reclamation/Backfilling and Grading (§§ 816.100, 816.101, 816.104(a) and 816.105(a))

Section 515(b)(16) of the Act, 30 U.S.C. 1265(b)(16), provides for general performance standards to require suface coal mining and reclamation operations to "insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with [such operations]."

In addition, section 515(b)(3) of the Act, 30 U.S.C. 1265(b)(3), with two exemptions, provides for general performance standards requiring that "all surface coal mining operations backfill, compact * * * and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated. * * *"

The phrase *approximate original contour* (AOC) is defined in section 701(2) of the Act, 30 U.S.C. 1291(2), and 30 CFR 701.5 generally to mean "that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain. * * *"

The previously noted exemptions to the AOC restoration requirements of section 515(b)(3) pertain to operations involving either "thin" or "thick" overburden. With respect to thin overburden, section 515(b)(3) provides "[t]hat in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region."

With respect to thick overburden, section 515(b)(3) provides "[t]hat in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operations are more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming, and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act."

The OSMRE permanent program promulgated on March 13, 1979 included regulations governing contemporaneous reclamation for surface mining activities at 30 CFR 816.100 (44 FR 15411), and backfilling and grading at 30 CFR 816.101, 816.102, 816.104 and 816.105. 44 FR 15411–15413. Section 816.100 required reclamation efforts to occur as contemporaneously as practicable with mining operations. Section 816.101 provided time and distance schedules as general requirements for backfilling and grading. Sections 816.104 and 816.105 provided for the thin and thick overburden exemptions authorized by section 515(b)(3) of the Act.

On May 24, 1983 (48 FR 23356) OSMRE revised its regulations governing contemporaneous reclamation and backfilling and grading. The revision deleted § 816.101 from the regulations, and added to § 816.100 a provision authorizing regulatory authorities to establish schedules for defining contemporaneous reclamation. At the same time the numerical limits on thin and thick overburden that appeared in §§ 816.104 and 816.105, *i.e.*, plus or minus twenty percent, were deleted and replaced with the statutory language. 48 FR 23355 (May 24, 1983).

The 1983 regulations were challenged in *In re Permanent Surface Mining Regulation (In re Permanent II (Round II))*, 21 ERC 1724, 1744–1746 (D.D.C. October 1, 1984). As a result, the U.S. District Court for the District of Columbia remanded the regulations governing contemporaneous reclamation (§ 816.100; 21 ERC at 1745–46), cut and fill terraces (§ 816.102(g); 21 ERC at 1744–45), thin overburden (§ 816.104(a);

21 ERC at 1746), and thick overburden (§ 816.105(a); 21 ERC at 1746). Generally, the district court found that the remanded regulations lacked sufficient guidance to regulatory authorities beyond what was provided in the Act.

OSMRE appealed the district court ruling, and the court of appeals in *NWF v. Hodel* affirmed the remand with respect to contemporaneous reclamation and thin and thick overburden, but reversed with respect to cut and fill terraces. Slip op. at 78–890. The court of appeals said:

"We hold, in accord with the Secretary, that the Act does not automatically and inevitably *require* him to 'flesh out' the prescriptions of section 515(b)(3) and (b)(16). Nonetheless, we affirm the remand of the contemporaneous reclamation and thick and thin overburden regulations, for only with respect to terracing did the Secretary adequately explain why guidance beyond the statutory requirements sensibly could not be given to local regulators.

"We note that the Act expressly commands the Secretary to flesh out certain statutory provisions. * * * Nothing in the Act, however, expressly requires the Secretary to flesh out sections 515(b)(3) or (b)(16)." Slip op. at 79 (emphasis in original).

"In short," the court of appeals continued, "We read the Act, in light of its legislative history * * * to afford the Secretary discretion, absent an express statutory instruction to regulate, to decide whether fleshing out is appropriate in light of other concerns. Chief among these concerns is the need to accommodate widely varying local conditions that will not admit of a single, nationwide rule. * * *" *Id.* at 80–81 (footnote omitted).

"* * * Under [*Motor Vehicle Mfrs. Ass'n v.*] *State Farm [Mut. Auto. Inc. Co.*, 463 U.S. 29, 43 (1983),] 'the agency must examine the relevant data and articulate a satisfactory explanation' for the revised regulations. * * * The Secretary's accounting for his actions regarding the contemporaneous reclamation, and thin and thick overburden regulations fails to meet this standard; we do not find in the rulemaking record any identified factual basis for, or satisfactory explanation of, the Secretary's conclusion that the variety of local conditions warrants regulations on these matters that simply reiterate the relevant prescriptions in sections 515(b)(3) and (b)(16) of the Act. In contrast, we find that the Secretary adequately explained his revision of the terracing regulation." *Id.* at 81.

In affirming the district court remand of the contemporaneous reclamation regulations, the court of appeals said:

"Section 515(b)(16) of the Act directs mine operators to reclaim land 'as contemporaneously as practicable [to the] mining operations.' In 1979, the Secretary had issued both a general instruction that reclamation occur 'as contemporaneously as practicable with mining operations,' 30 CFR 816.100 (1982), and specific 'time and distance' standards for backfilling and grading spoil at contour and area strip mines, 30 CFR 816.101 (1982)." *Id.* at 82 (footnotes omitted, brackets in original).

"The 1983 revision retained the general prescription in § 816.100, but eliminated § 816.101 entirely. * * * To support his deletion, the Secretary commented 'that "contemporaneous reclamation" is a relative term which must be interpreted by each State on the basis of the mining conditions in its territory.' * * * Because § 816.101 was devised to account for local differences, we do not find entirely satisfying, as an explanation for scrapping the regulations entirely, the observation that '"contemporaneous reclamation" is a relative term' whose precise meaning depends on local conditions. The core deficiency, however, is that the Secretary has published barely more than a *conclusion* that the variety of mining conditions across the nation made § 816.101 of the regulations infeasible. *State Farm* requires a 'satisfactory *explanation*,' one that informs us *why* he drew his conclusion. The Secretary, in other words, if he determines there is no need to 'flesh out' the statute, must 'flesh out' his explanation so that we can review the rationality of his decision." *Id.* at 83–84 (footnote omitted, emphasis in original).

In affirming the district court remand of the thin and thick overburden regulations, the court of appeals said:

"Section 515(b)(3) of the Act directs mine operators to return land to its 'approximate original contour.' The provision contains an exemption, however, for situations where the spoil is either so thin or thick relative to the coal seam that there is insufficient or too much spoil to permit return to approximate original contour. * * * In 1979, the Secretary issued regulations that defined numerically when a variance from the approximate original contour requirement for too little or too much spoil could be granted. 30 CFR 816.104 and 186.105 (1982).

"In 1983, the Secretary eliminated the numerical definition, permitting a variance whenever the mine operator demonstrates that spoil is either 'insufficient' or 'more than sufficient' to restore land to its approximate original contour. 30 CFR 816.104 and 816.105 (1986). The sole support we have found for this revision is the Secretary's cryptic observation that '[t]he mathematical limit * * * has proved to be impractical because of its preciseness.' * * * We do not know from this unadorned statement why no adjusted (less precise) or alternative nationwide rule was ordered in place of the one found impractical. Absent fuller statement of the reason for the revision, we cannot intelligently determine whether the Secretary has a 'satisfactory explanation' for his action." *Id.* at 84–87 (footnotes omitted, brackets in original).

OSMRE now proposes to amend §§ 816.100, 816.104 and 816.105, and to add a new § 816.101, in conformance with the district court and court of appeals decisions.

III. Discussion of Proposed Rule

The proposed rule includes a number of similar sections in Part 816, which applies to surface mining activities, and Part 817, which applies to underground mining activities. For convenience, these similar sections are cited together in the following headings as §§ 816.[]/817.[], but in most cases only Party 816 is discussed in the text. In such cases the discussion applies equally to Part 817 unless otherwise noted.

A. Section 761.5—Definitions

OSMRE proposes to revise its 30 CFR 761.5 definition of *significant recreational, timber, economic, or other values incompatible with surface coal mining operations.* The revised definition would comply with the court of appeals decision upholding the district court remand of this definition. (See related discussion in II. Background, under the heading, A. Value Incompatible with Surface Coal Mining Operations.) In conformance with those decisions, OSMRE proposes to delete from the definition the phrase "beyond an operator's ability to repair or restore." As the courts have ruled, the operator's ability to reclaim the land may not be used as a criterion for determining compatibility under this definition.

B. Section 785.16—Permits Incorporating Variances from AOC Restoration Requirements for Steep Slope Mining

(For a related proposal, see the subsequent heading, I. Sections 816.133/817.133—AOC Variances)

1. Section Heading

OSMRE proposes to revise the section heading of 30 CFR 785.16 to include the phrase "for steep slope mining," and thus emphasize that this section authorizes variances from approximate original contour (AOC) only for steep slope surface coal mining and reclamation operations.

2. Section 785.16(a)

Section 785.16 authorizes the regulatory authority to issue a permit which includes a variance from certain AOC restoration requirements. The district court ruled, and the court of appeals agreed, that such a variance is authorized by the Act only for steep slope mining. (See related dicussion in II. Background, under the heading, B. AOC Variances.)

In accordance with these court decisions, OSMRE proposes to revise § 785.16(a) to limit the granting of AOC variances to "steep slope surface coal mining and reclamation operations."

The quoted phrase duplicates the corresponding wording of the 1979 regulation.

OSMRE further proposes to remove the November 20, 1986, suspension of § 785.16, which the proposed revision would render superfluous. (See II. Background, regarding suspension). The remainder of § 785.16 would remain unchanged.

C. Sections 816.74/817.74—Disposal of Excess Spoil: Preexisting Benches

OSMRE proposes to revise § 816.74 to conform its requirements for the disposal of excess spoil on preexisting benches with the backfilling and grading requirements of 30 CFR 816.102. This proposal was prompted by public comment received in response to an OSMRE draft study on remining initiatives and at a related public meeting. (See related discussion in II. Background, under the heading, C. Disposal of Excess Spoil on Preexisting Benches.)

The proposed rule would redesignate §§ 816.74(b), (c), (d) and (e) as §§ 816.74(c), (d), (e) and (g), respectively; would revise §§ 816.74(a) and (e); and would add new §§ 81.74(b) and (f). A discussion of each of these proposed changes follows under separate subheadings for each paragraph of this section.

1. Sections 816.74(a)/817.74(a)

OSMRE proposes to substitute for the existing references in § 816.74(a) to the general requirements for the disposal of excess spoil, new references to the corresponding general requirements for backfilling and grading. Also, to account for difference in the existing and newly-referenced sections, OSMRE proposes to add to § 816.74(a) a requirement that the affected portion of the preexisting bench be permitted. A detailed explanation follows.

Currently, § 816.74(a) authorizes the regulatory authority to approve the disposal of excess spoil through placement on preexisting benches "provided that all the standards set forth in § 816.71(a), (b)(1) [and] (d) through (i) * * * are met." The referenced § 816.71 contains general requirements for the disposal of excess spoil.

The proposed rule would replace the current references to § 816.71 with references to § 816.102 (c), (e) through (h), and (j). Section 816.102 contains the backfilling and grading counterparts to the excess spoil disposal regulations in § 816.71. This substitution would conform the requirements for the disposal of excess spoil on a preexisting bench with the existing requirements for the backfilling and grading of an active mining bench. As explained subsequently in greater detail, OSMRE proposes to do this in recognition of the similar characteristics of preexisting and active mining benches.

Currently-referenced § 816.71(a) requires that the disposal of excess spoil occur "within the permit area." The substituted paragraphs of § 816.102 do not explicitly refer to the permit area. To account for this difference, proposed § 816.74(a) would explicitly require that "the affected portion of the preexisting bench is permitted." Under this provision, the affected portion of the preexisting bench could be either within the permit area where the excess spoil was generated, or in another permit area.

Currently-referenced § 816.71(a) also covers adverse effects on surface and groundwater, mass stability and movement, and the suitability of the final fill for reclamation and revegetation. The proposed rule addresses effects on surface and ground water by reference to §§ 816.102 (c), (e) through (h), and (j), and by the addition of § 816.74(e)(3). (See subsequent discussion of § 816.74(e)(3).)

The proposed rule addresses effects on mass stability and movement by reference to §§ 816.102 (c), (e), (g) and (j), and by the addition of § 816.74(e)(4). (See subsequent discussion of § 816.74(e)(4).) The suitability of the final fill for reclamation and revegetation are addressed in the proposed rule by reference to § 816.102 (e) through (h), and (j).

Currently-referenced § 816.71(b)(1) requires that excess spoil fill and appurtenant structures be designed using current, prudent engineering practices; meet any design criteria established by the regulatory authority; and be certified by a qualified registered professional engineer. OSMRE proposes to delete from § 816.74(a) the reference to § 816.71(b)(1) because existing § 816.74(c), which requires that "[t]he fill shall be designed, using current, prudent engineering practices," itself provides sufficient design standards. Note, however, that under referenced § 816.102(e), which itself references 30 CFR 816.81, the requirement of § 816.81(c) for design certification would apply to any fill constructed on a preexisting bench using coal processing waste or underground development waste.

Currently-referenced §§ 816.71 (d) and (e)(2) require foundation analysis, keyway cuts, and rock toe buttresses, and prescribe spoil placement and the thickness of spoil lifts. These measures are appropriate where excess spoil is disposed of on sloping ground and there is a need to ensure stability of the fill structure. Corresponding requirements do not appear in § 816.102 since backfilling and grading operations typically are conducted on relatively flat benches where these special measures are not needed to ensure stability. Because preexisting benches are similar to active contour mining benches that are regulated under § 816.102, the reference to the requirements of §§ 816.71 (d) and (e)(2) was deleted from the proposed rule.

Currently-referenced § 816.71(e)(1) provides for the removal of vegetative and organic materials prior to the placement of excess spoil; the removal, segregation, storage and redistribution of topsoil; and the use of organic material as mulch or as an additive to topsoil. Proposed new § 816.74(b) contains corresponding requirements. (See subsequent discussion of § 816.74(b).)

Currently-referenced §§ 816.71(e) (3), (4) and (5) address final fill configuration and terraces, prohibit permanent impoundments, authorize small depressions, and require adequate covering of acid-, toxic-forming and combustible materials. Proposed § 816.74(a) substitutes references to § 816.102(f) through (h), which contain corresponding requirements. Although the rule would not explicitly prohibit permanent impoundments, § 816.74(a) does not reference § 816.102(i), which authorizes permanent impoundments in certain circumstances, and the regulatory authority would not be authorized to allow permanent impoundments on preexisting benches.

Currently-referenced § 816.71(f) addresses drainage control, including diversions and underdrains. Deleting the reference to § 816.71(f), proposed new § 816.74(e)(4) would require that "[t]he preexisting bench shall be backfilled and graded to * * * [p]revent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability." (See subsequent discussion of § 816.74(e)(4).)

Currently-referenced § 816.71(g) addresses surface area stabilization, erosion and revegetation. Proposed § 816.74(a) substitutes a reference to § 816.102(j), the backfilling and grading counterpart in terms of stabilization and erosion. In addition, the last sentence of § 816.71(g) would be replicated as new § 816.74(f) to require that "[a]ll disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction." (See subsequent discussion of § 816.74(f).)

Currently-referenced § 816.71(h) addresses periodic inspections of excess spoil fill structures during construction. OSMRE proposes to delete this requirement from § 816.74 since the backfilling and grading regulations at § 816.102 do not require these inspections. Because a preexisting bench provides a relatively flat surface, the design and construction of fill structures on preexisting benches are not as critical as for structures regulated under § 816.71, and inspections during construction are not necessary. Note, however, that under referenced § 816.102(e), which itself references 30 CFR 816.83, the requirement of § 816.83(d) for design inspection during construction would apply to any fill constructed on a preexisting bench using coal processing waste or underground development waste.

Currently-referenced § 816.71(i) addresses the disposal of coal mine waste in excess spoil fills. Proposed § 816.74(a) substitutes a reference to § 816.102(e), the backfilling and grading counterpart. While § 816.71(i) requires disposal of coal mine waste only in accordance with § 816.83, § 816.102(e) requires disposal in accordance with both §§ 816.81 *and* 816.83, and thus is more inclusive. While § 816.71(i) limits disposal to coal mine waste that is nontoxic and nonacid forming, proposed § 816.74 would allow the disposal of such materials as long as they were covered adequately, as provided in referenced § 816.102(f).

2. Sections 816.74(b)/817.74(b)

Currently-referenced § 816.71(e)(1) addresses the removal of vegetative and organic materials from the disposal area, and the removal, segregation, storage and the redistribution of topsoil. In place of this reference, proposed new § 816.74(b) would require that "[a]ll vegetation shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil," would cross-reference the permanent program topsoil performance standards at 30 CFR 816.22, and would allow the use of topsoil substitutes in accordance with § 812.22(b) where insufficient topsoil was available on the preexisting bench.

3. Sections 816.74(c)/817.74(c)

Existing § 816.74(b) would be redesignated as proposed § 816.74(c).

4. Sections 816.74(d)/817.74(d)

Existing § 816.74(c) would be redesignated as proposed § 816.74(d).

5. Sections 816.74(e)/817.74(e)

Existing § 816.74(d) (1) and (2) require that the preexisting bench be backfilled and graded to achieve the most moderate slope possible which does not exceed the angle of repose, and to eliminate the highwall to the maximum extent technically practical. Only minor editorial revisions are proposed for the corresponding redesignated §§ 816.74(e) (1) and (2).

Proposed new § 816.74(e)(3) would require that the preexisting bench be backfilled and graded to "[m]inimize erosion and water pollution both on and off the site." This replicates the backfilling and grading provision at § 816.102(a)(4), which is not referenced by the rule. This requirement, in conjunction with other previously discussed provisions, would provide the requisite hydrologic balance protection.

Proposed new § 816.74(e)(4) would require that the preexisting bench be backfilled and graded to "[p]revent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability." This corresponds with § 816.71(f), which currently is referenced by existing § 816.74(a). (See preceding discussion of § 816.74(a).)

6. Sections 816.74(f)/817.74(f)

Proposed new § 816.74(f) would require that "[a]ll disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction." This replicates the last sentence of § 816.71(g), which currently is referenced by § 816.74(a). (See preceding discussion of § 816.74(a).)

7. Sections 816.74(g)/817.74(g)

Existing § 816.74(e) would be redesignated as proposed § 816.74(g).

D. Sections 816.81/817.81—Coal Mine Waste: General Requirements

This rule would amend § 816.81 in response to the district court decision concerning end or side dumping of coal mine waste. (See related discussion in II. Background, under the heading, D.1. Controlled Transport of Coal Waste.) As previously noted, the district court said that OSMRE was not required to prohibit end or side dumping, but need only explain why this practice was reasonable. Nevertheless, OSMRE proposes to reintroduce into § 816.81 the placement method of "hauled or conveyed" as it appeared prior to the 1983 rule, and thus to prohibit the final placement of coal mine waste by end or side dumping, consistent with the discussion of this issue in the preamble to the 1979 rule at 44 FR 15209–10 (March 13, 1979).

OSMRE continues to maintain, as it did in the preamble to the 1983 rule (48 FR 44011), that the controlled gravity placement of coal mine waste is not inconsistent with the Act, and that the legislative history of the Act does not indicate that the Congress intended to regulate the means of transporting coal mine waste to the disposal site.

The practice of transporting coal mine waste through methods other than direct hauling is well documented in the technical literature. (See, for example, "Engineering and Design Manual—Coal Refuse Disposal Facilities," pp. 8.22–8.75, by E. D'Appolonia Consulting Engineers for the Mine Safety and Health Administration.) These methods include conveyor belts and tramways and particularly useful in mountainous terrain where haul road construction is difficult, or where steep grades greatly decrease the efficiency of individual hauling units. (See *id.* at p. 8.45; and "Pit Slope Manual," "Chapter 9: Waste Embankments," p. 96, by the Canada Center for Mineral and Energy Technology.)

However, OSMRE is aware of the dangers associated with the end or side dumping of coal mine waste, and of the need for placement in a controlled manner. Thus, the requirement of proposed § 816.81 that "[c]oal mine waste shall be hauled or conveyed and placed in a controlled manner" would preclude final placement of material by means of gravity through end or side dumping.

E. Sections 816.89(d)/817.89(d)—EPA Regulations on Hazardous Wastes

The district court, without considering the merits of § 816.89(d), concluded that it was promulgated without adequate notice and comment as required by the Administrative Procedure Act. (See related discussion in II. Background, under the heading, D.2. EPA Regulations on Hazardous Wastes.)

OSMRE proposes to remove § 816.89(d) as superfluous because all noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA), P.L. 94–580, as amended, and 40 CFR Part 261 is regulated by EPA in accordance with the requirements of Subtitle C of RCRA and its implementing regulations.

F. Section 816.100—Contemporaneous Reclamation

OSMRE proposes to revise existing § 816.100 to remove a requirement which

duplicates a requirement in proposed § 816.101(b).

Proposed new § 816.101 would govern the scheduling of backfilling and grading. (See the immediately following heading, G. Section 816.101—Backfilling and Grading: Time and Distance Requirements.) Proposed § 816.101(b) would authorize the regulatory authority to establish alternative backfilling and grading schedules. This same authorization currently appears as the last sentence of § 816.100, but is more appropriate in the context of § 816.101.

Thus, upon promulgation of § 816.101 the final sentence of existing § 816.100, which states that "[t]he regulatory authority may establish schedules that define contemporaneous reclamation," would become superfluous and be removed.

G. Section 816.101—Backfilling and Grading: Time and Distance Requirements

As discussed previously, in 1983 OSMRE deleted from its regulations § 816.101, which in paragraph (a) set out time and distance requirements for backfilling and grading. (See II. Background, under the heading, E. Contemporaneous Reclamation/ Backfilling and Grading; for a related proposal, also see the immediately preceding heading, F. Section 816.100—Contemporaneous Reclamation.) The district court remanded the deletion of § 816.101, and the court of appeals agreed. OSMRE now proposes to add a new § 816.101 in conformance with the district court and court of appeals decisions.

1. Section 816.101(a)

Proposed § 816.101(a) would establish surface coal mining backfilling and grading time and distance schedules for contour and area mining, and authorize the regulatory authority to establish schedules for other surface mining methods. For contour mining, § 816.101(a)(1) would require the completion of backfilling and grading within 60 days or 1,500 linear feet following coal removal. For area mining, § 816.101(a)(2) would require completion within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge.

Under § 816.101(a)(3) the schedules for surface mining methods other than contour or area mining would be as established by the regulatory authority through the State program approval process. Any schedule established by the regulatory authority under § 816.101(a)(3) would have to incorporate one of the two standards set out in § 816.101(c).

The time and distance requirements of proposed § 816.101(a) are the same as in the 1979 rule. The preamble to that rule (44 FR 15224 (March 13, 1979)) stated that its backfilling and grading schedules were based on an analysis of existing State regulations. During preparation of this proposed rule, OSMRE again reviewed the backfilling and grading schedules in approved State programs. All State programs have adopted either the 1979, or more stringent, schedules. Based on almost ten years of experience, these schedules are fully adequate to meet the goals of the Act for contemporaneous reclamation.

2. Section 816.101(b)

Proposed § 816.101(b) would allow the regulatory authority to establish, through the State program approval process, alternative backfilling and grading schedules in lieu of those set out in § 816.101(a). This responds to comments received during outreach briefings, in which the States requested backfilling and grading guidelines, but also asked to retain discretion in determining alternative schedules. OSMRE is proposing this provision to give State regulatory authorities the flexibility to adopt backfilling and grading schedules which meet State-specific conditions.

The alternative schedules, which would have to be consistent with the schedules set out in § 816.101(a), could apply to geographic units, mining methods, or other categories selected by the regulatory authority. As required by subsequently discussed § 816.101(c), each alternative schedule would be based on either (1) the maximum time interval between removal of the coal and the completion of backfilling and grading; or (2) the maximum extent of the operation between coal removal and the completion of backfilling and grading, as measured in linear feet, number of spoil ridges, or other quantifiable criteria.

Alternative backfilling and grading schedules would be established as State program regulations approved by the Secretary. During the approval process each alternative schedule, with supporting justification, would be reviewed by OSMRE to determine whether it would meet the requirements for contemporaneous reclamation. The review would be based on the climate, terrain, mining methods and other physical conditions in the area to which the schedule would apply.

Under § 816.101(b), for example, a State may wish to demonstrate that the requirement for backfilling and grading to follow coal removal by not more than sixty days is unrealistic for contour mining operations in that State. In that case the Secretary might approve a longer duration as consistent with § 816.101(a).

3. Section 816.101(c)

Proposed § 816.101(c) would require the regulatory authority to incorporate in any backfilling and grading schedule it established either of the two alternative standards set out in the rule. These standards would apply both to schedules for other surface mining methods established under § 816.101(a)(3), and to alternative schedules established under § 816.101(b).

The two alternative standards are (1) the maximum time interval between coal removal and the completion of backfilling and grading; and (2) the maximum extent of the operation between initial coal removal and the completion of backfilling and grading, as measured in lineal feet, number of spoil ridges, or other quantifiable equivalent. These standards correspond with the schedules set out in §§ 816.101(a) (1) and (2), but lack specific numerical requirements, which would be added by the regulatory authority.

4. Section 816.101(d)

Proposed § 816.101(d) would authorize the regulatory authority to extend the time allowed for backfilling and grading a specified portion of the permit area if the permittee demonstrated in accordance with 30 CFR 780.18(b)(3) that additional time was necessary. The 1979 rules at §§ 816.101(a) (1) and (3) for contour and area strip mining, respectively, made similar provision for granting additional time. 44 FR 15411. As under the 1979 rule the regulatory authority could allow additional time for backfilling and grading if, for example, the permittee demonstrated that the time limit of the rule was too restrictive because of weather or local soil conditions. 44 FR 15226.

H. Section 816.104—Backfilling and Grading: Thin Overburden, Section 816.105—Backfilling and Grading: Thick Overburden

As discussed previously, in 1983 OSMRE replaced the numerical limits on thin and thick overburden in §§ 816.104 and 816.105, respectively, with the more general statutory language. (See II. Background, under the heading, E. Contemporaneous Reclamation/ Backfilling and Grading.) The district court remanded these sections, and the

court of appeals agreed, seeking a fuller statement of the reasons for the revision. OSMRE now proposes to revise §§ 816.104 and 816.105, and to explain fully its reasons for doing so, in conformance with the district court and court of appeals decisions.

For convenience, the proposed definitions of *thin overburden* and *thick overburden* in §§ 816.104(a) and 816.105(a), respectively, are discussed together under the following combined subheading. The backfilling and grading performance standards for thin and thick overburden in §§ 816.104(b) and 816.105(b), respectively, are then discussed under separate subheadings.

I. Section 816.104(a)—Definition of Thin Overburden, Section 816.105(a)—Definition of Thick Overburden

OSMRE has reorganized §§ 816.104 and 816.105 so that paragraphs (a) of these sections contain definitions of *thin overburden* and *thick overburden*, respectively, and paragraphs (b) contain the corresponding backfilling and grading performance standards. The definitions were not relocated to 30 CFR 701.5 because of their limited applicability. The term *spoil*, which is used in the definitions, is defined at § 701.5 to mean "overburden that has been removed during surface coal mining operations."

Proposed § 816.104(a) defines *thin overburden* as "insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) [C]losely resemble the surface configuration of the land prior to mining; or (2) [b]lend into and complement the drainage pattern of the surrounding terrain".

Proposed § 816.105(a) defines *thick overburden* as "more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not: (1) [C]losely resemble the surface configuration of the land prior to mining; or (2) [b]lend into and complement the drainage pattern of the surrounding terrain".

Each of these two definitions includes three standards which incorporate the requirements of sections 515(b)(3) and 701(2) of the Act. The first standard is the sufficiency of the overburden, and in the case of thin overburden, other waste materials, to restore approximate original contour (AOC). The second and third standards, which are elements of the first, concern the definition of AOC in terms of the surface configuration and drainage pattern off the reclaimed area. OSMRE proposes to adopt these general standards for the following reasons.

The exemptions in section 515(b)(3) of the Act for areas of thin and thick overburden are based on the sufficiency of the overburden to restore the land to AOC. Thin overburden is insufficient to restore AOC; thick overburden in more than sufficient. Thus, whether thin or thick overburden occurs depends fundamentally on the definition of *AOC*.

Section 701(2) of the Act and the corresponding regulation at 30 CFR 701.5 generally define *AOC* as "that *surface configuration* achieved by backfilling and grading of the mined area so that *the reclaimed area* including any terracing or access roads, [1] *closely resembles the general surface configuration of the land prior to mining* and [2] *blends into and complements the drainage pattern of the surrounding terrain*, with all highwalls and spoil piles eliminated * * *." (Emphasis added.)

Under this definition the two principal standards for determining AOC are whether the surface configuration of the reclaimed area would (1) closely resemble the surface configuration of the land prior to mining; and (2) blend into and complement the drainage pattern of the surrounding terrain. In restoring AOC, both of these standards must be met.

The proposed definitions of *thin overburden* and *thick overburden* incorporate these two standards from the definition of *AOC* as the measure of whether the spoil and other available waste materials are sufficient to restore AOC. The definitions apply these two standards for AOC in the disjunctive, using the term *or*, because a failure to meet either standard would prevent the restoration of AOC, and thus establish the occurrence of thin or thick overburden.

Unlike the proposed rule, the 1979 regulations defined thin and thick overburden in precise numerical terms as having a final thickness of twenty percent less or more, respectively, than the initial thickness of the overburden and coal. 44 FR 15412–13. As it did in 1983, OSMRE again rejects those precise numerical terms as impractical for evaluating the utility of the overburden and other available waste materials to restore AOC. As the Congress has stated, "[AOC] is, of necessity, a flexible standard which contemplates different mining circumstances". H.R. Rep. No. 95–218, 95th Cong., 1st Sess. 96 (1977).

Defining thin and thick overburden in precise numerical terms is impractical because of the diversity of surface configurations and drainage patterns to which the proposed rule would apply throughout the coal mining regions of the United States. What might constitute a gross variation from AOC on flat prairie land might be barely perceptible in rugged mountain terrain. Depending on the circumstances, inflexible numerical standards might be either too loose or too stringent, and seldom ideal.

The use of the word *approximate* in the term AOC in itself supports the adoption of a subjective standard. OSMRE is aware of no technical basis for universally relating a standard of twenty percent more or less overburden, or any other numerical standard, to the restoration of AOC. The previously quoted definitions of *AOC* at section 701(2) of the Act and 30 CFR 710.5 employ no such numerical standard. The existing backfilling and grading performance standards at 30 CFR 818.102, which in paragraph (a) require backfilling and grading to "[a]chieve the approximate original contour," employ no such numerical standard.

Evaluations of post-mining surface configuration and drainage pattern involve subjective professional judgments that must be custom-tailored to approximate the terrain at any given mine. The responsible regulatory authority is best equipped to determine the sufficiency of overburden to restore AOC in its own jurisdiction on a case-by-case basis using general standards.

For these reasons OSMRE believes it is preferable to define *thin overburden* and *thick overburden* generally to conform with the standards of the Act, while giving the regulatory authority sufficient discretion to apply these standards in a sound professional manner to the diverse conditions which prevail at individual mines in each particular State.

2. Section 816.104(b)—Thin Overburden Performance Standards

Proposed § 816.104(b) sets out the performance standards that apply where thin overburden, as defined in

§ 816.104(a), occurs within the permit area. The permittee would establish the occurrence of thin overburden in accordance with 30 CFR 780.18(b)(3), which governs the content of the permit application reclamation plan as it relates to backfilling, soil stabilization, compacting and grading.

Where the occurrence of thin overburden was established, § 816.104(b) would require the permittee at a minimum to (1) use all spoil and other waste materials available from the entire permit area to attain the lower practicable grade, but not more than the angle of repose; and (2) meet the general backfilling and grading requirements of 30 CFR 816.102 (a)(2) through (j).

The performance standards in §§ 816.104(b) (1) and (2) are the same as were adopted by OSMRE in 1983 (48 FR 23369), and are intended to complement the general backfilling and grading performance standards in § 816.102. Section 816.104(b)(1) derives directly from the thin overburden exemption in section 515(b)(3) of the Act. Section 816.104(b)(2) incorporates all of the requirements of § 816.102, which sets out the general requirements for backfilling and grading, except for those in § 816.102(a)(1), which requires the restoration of AOC, and those in § 816.102(k), which lists a number of exemptions, including one for thin overburden.

The only practicable difference between the general performance standards in § 816.102 and those for thin overburden in § 816.104(b) is that for the latter the achievement of AOC is not required. Together, §§ 816.104(b) (1) and (2) incorporate all of the requirements for backfilling, grading and compacting thin overburden that appear in section 515(b)(3) of the Act.

3. Section 816.105(b)—Thick Overburden Performance Standards

Proposed § 816.105(b) sets out the performance standards that apply where thick overburden, as defined in § 816.105(a), occurs within the permit area. The permittee would establish the occurrence of thick overburden in accordance with 30 CFR 780.18(b)(3), which governs the content of the permit application reclamation plan as it relates to backfilling, soil stabilization, compacting and grading.

Where the occurrence of thick overburden was established, § 816.105(b) would require the permittee at a minimum to (1) restrore the approximate original contour and then use the remaining spoil and other water materials to attain the lowest practicable grade, but not more than the angle of repose; (2) meet the general backfilling and grading requirements of 30 CFR 816.102 (a)(2) through (j); and (3) dispose of any excess spoil in accordance with 30 CFR 816.71 through 816.74.

The performance standards in §§ 816.105(b) (1) through (3) are the same as were adopted by OSMRE in 1983 (48 FR 23369), and are intended to complement the general backfilling and grading performance standards in § 816.102. Section 816.105(b)(1) derives directly from the thin overburden exemption in § 515.(b)(3) of the Act. Section 816.105(b)(2) incorporates all of the requirements of § 816.102, which sets out the general requirements for backfilling and grading, except for those in § 816.102(a)(1), which requires the restoration of AOC, and those in § 816.102(k), which lists a number of exemptions, including one for thick overburden. Section 816.105(b)(3) references the existing regulations governing the disposal of excess spoil, and would ensure that any spoil and other waste materials that would exceed the angle of repose are disposed of in accordance with the requirements of the Act.

The only practical differences between the general performance standards in §816.102 and those for thick overburden in §816.105(b) are that under the latter (1) after AOC is restored the permittee may continue to use any remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose; and (2) the permitted must dispose of any excess spoil in accordance with §§816.71 through 816.74. Together, these sections incorporate all of the requirements for backfilling, grading and compacting thick overburden that appear in section 515(b)(3) of the Act.

I. Sections 816.133(d)/817.133(d)—AOC Variances

Existing §§816.133(d)/817.133(d) set out criteria for the granting of a variance from the requirement to restore disturbed areas to their approximate original contour, including in paragraphs (d)(1) that the variance be granted in accordance with § 785.16. This reference to remanded § 785.16 promoted the district court to remand §§ 816.133(d)/817.133(d) to the extent they permitted a variance other than for steep slope mining. (See related discussion in II. Background, under the heading, B. AOC Variances, and in this section of the preamble under the heading, B. Section 785.16—Permits Incorporating Variances from AOC Restoration Requirements for Steep Slope Mining.)

As explained previously, OSMRE suspended §§ 816.133(d)/817.133(d) in compliance with the district court decision. The proposed revision of § 785.16 would render these suspensions superfluous. Thus, OSMRE proposes to remove the suspensions of §§ 816.133(d)/817.133(d) upon promulgation of final § 785.16.

IV. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing isntructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden to, Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that the proposed rule is not a major rule under the criteria of Executive Order 12291 (February 17, 1981), and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule would affect a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act

of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address specified previously (see "ADDRESSES"). The EA will be completed, and a finding on the significance of any resulting impacts will be made, prior to promulgation of the final rule.

Author

The principal author of this proposed rule is Albert A. Kashinski, Division of Surface Mining, Office of the Solicitor, U.S. Department of the Interior, Washington, DC. 20240.

List of Subjects

30 CFR Part 761

Historic preservation, National forests, National parks, National trails system, National wild and scenic rivers system, Surface mining, Undergound mining, Wilderness areas, Wildlife refuges.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Undergound mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 761, 785, 816 and 817 as set forth below:

Dated: August 16, 1988.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

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

Authority: 30 U.S.C. 1201, *et seq.*

§ 761.5 [Amended]

2. Section 761.5 is amended by removing from the definition of *significant recreational, timber, economic, or other values incompatible with surface coal mining operations* the phrase "beyond an operator's ability to repair or restore."

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

3. The authority citation for Part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, and Pub. L. 100-34.

4. The suspension published in the **Federal Register** of November 20, 1986 at 51 FR 41961 is removed for § 785.16.

5. Section 785.16 is amended by revising the heading and the first sentence of paragraph (a) to read as follows:

§ 785.16 Permits incorporating variances from approximate original contour restoration requirements for steep slope mining.

(a) The regulatory authority may issue a permit for nonmountaintop removal, steep slope, surface coal mining and reclamation operations which includes a variance from the requirements to restore the disturbed areas to their approximate original contour that are contained in §§ 816.102, 816.104, and 816.107, or 817.102 and 817.107 of this chapter. * * *

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

6. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100-34, unless otherwise noted.

7. Section 816.74 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (g), respectively, by revising paragraphs (a) and (e), and by adding paragraphs (b) and (f) to read as follows:

§ 816.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in §§ 816.102 (c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 816.22 of this part. Substitute or supplemental materials may be used in accordance with § 816.22(b) of this part.

* * * * *

(e) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose;

(2) Eliminate the highwall to the maximum extent technically practical;

(3) Minimize erosion and water pollution both on and off the site; and

(4) Prevent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability.

(f) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

* * * * *

8. Section 816.81 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 816.81 Coal mine waste: General requirements.

(a) *General.* All coal mine waste shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed in a controlled manner to—

* * * * *

§ 816.89 [Amended]

9. Section 816.89 is amended by removing paragraph (d).

§ 816.100 [Amended]

10. Section 816.100 is amended by removing the last sentence.

11. Section 816.101 is added to read as follows:

§ 816.101 Backfilling and grading: Time and distance requirements.

(a) Except as provided in paragraphs (b) and (d) of this section, backfilling and grading for surface mining activities shall be completed according to one of the following schedules:

(1) *Contour mining.* Within 60 days or 1,500 linear feet following coal removal;

(2) *Area mining.* Within 180 days following coal removal, and not more than four spoil ridges behind the pit being worked, the spoil from the active pit constituting the first ridge; or

(3) *Other surface mining methods.* In accordance with the schedule established by the regulatory authority through the State program approval process.

(b) In lieu of the schedules set out in paragraph (a) of this section, the regulatory authority may establish through the State program approval process alternative backfilling and grading schedules which are consistent

with that paragraph. Alternative schedules may apply to geographic units, mining methods, or other categories selected by the regulatory authority.

(c) Each backfilling and grading schedule established by the regulatory authority shall incorporate one of the following two standards governing the completion of backfilling and grading:

(1) Maximum time interval between coal removal and the completion of backfilling and grading; or

(2) Maximum extent of the operation between coal removal and the completion of backfilling and grading, as measured in linear feet, number of spoil ridges, or other quantifiable equivalent.

(d) The regulatory authority may extend the time allowed for backfilling and grading a specified portion of the permit area if the permittee demonstrates in accordance with § 780.18(b)(3) of this chapter that additional time is necessary.

12. Section 816.104 is revised to read as follows:

§ 816.104 Backfilling and grading: thin overburden.

(a) *Definition. Thin overburden* means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) *Performance standards.* Where thin overburden occurs within the permit area, the permittee at a minimum shall:

(1) Use all spoil and other waste materials available from the entire permit area to attain the lowest practicable grade, but not more than the angle of repose; and

(2) Meeting the requirements of §§ 816.102 (a)(2) through (j) of this part.

13. Section 816.105 is revised to read as follows:

§ 816.105 Backfilling and grading: Thick overburden.

(a) *Definition. Thick overburden* means more than sufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) *Performance standards.* Where thick overburden occurs within the permit area, the permittee at a minimum shall:

(1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(2) Meet the requirements of §§ 816.102 (a)(2) through (j) of this part; and

(3) Dispose of any excess spoil in accordance with §§ 816.71 through 816.74 of this part.

§ 816.133 [Amended]

14. In § 816.133, the suspension of paragraph (d) is removed.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

15. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100–34, unless otherwise noted.

16. Section 817.74 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (g), respectively, by revising paragraphs (a) and (e), and by adding paragraphs (b) and (f) to read as follows:

§ 817.74 Disposal of excess spoil: preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on a preexisting bench if the affected portion of the preexisting bench is permitted and the standards set forth in §§ 817.102 (c), (e) through (h), and (j), and the requirements of this section are met.

(b) All vegetation shall be removed from the affected portion of the preexisting bench prior to placement of the excess spoil. Any available topsoil on the bench shall be removed, stored and redistributed in accordance with § 817.22 of this part. Substitute or supplemental materials may be used in accordance with § 817.22(b) of this part.

* * * * *

(e) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose;

(2) Eliminate the highwall to the maximum extent technically practical;

(3) Minimize erosion and water pollution both on and off the site; and

(4) Prevent water infiltration into the backfill from springs, water courses, or seeps, and ensure stability.

(f) All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

* * * * *

17. Section 817.81 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 817.81 Coal mine waste: General requirements.

(a) *General.* All coal mine waste shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be hauled or conveyed and placed in a controlled manner to—

* * * * *

§ 817.89 [Amended]

18. Section 816.89 is amended by removing paragraph (d).

§ 817.133 [Amended]

19. In § 817.133, the suspension of paragraph (d) is removed.

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Monday,
October 31, 1988

Part III

Department of Justice

Immigration and Naturalization Service

8 CFR Part 100 et al.

Applicant Processing for the Legalization Program; Conforming Amendments and Adjustment of Status for Certain Aliens; Interim Rules With Requests for Comment

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 103, 264, and 299

[INS Number: 1020R-88]

Applicant Processing for the Legalization Program; Conforming Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends certain regulations to conform to regulation changes published elsewhere in this issue. These provisions relate to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this rule is to effect the necessary changes to the regulations brought about by the Service's intent to process applications for adjustment of temporary resident aliens for lawful permanent residence status.

DATES: Interim rule is effective November 7, 1988. Comments must be received on or before November 30, 1988.

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

FOR FURTHER INFORMATION CONTACT: Raymond B. Penn, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987; 53 FR 9274, March 21, 1988; 53 FR 9862, March 28, 1988, and at 53 FR 23382, June 22, 1988.

At 53 FR 18096, May 20, 1988, the Service published in the **Federal Register** a notice making available to the public the preliminary working draft regulations. More than 170 copies of the preliminary working draft were forwarded to requesters. As a result, 135 individuals and interested organizations submitted written comments. The comments were received and given serious consideration.

In response to the comments received on the preliminary working draft, the Service published a notice of proposed rulemaking at 53 FR 29818 in the **Federal Register** on August 8, 1988. The proposed rule changed the list of legalization offices; included other Service offices besides legalization offices where interviews will occur; allowed for the approval or denial of permanent resident applications at the district director level; set the application fee; provided the display control number and edition date for Form I-698; allowed for the district director to certify decisions to the Administrative Appeals Unit; and allowed for the submission of I-695, Application for Replacement of Form I-688A, Employment Authorization, or Form I-688, Temporary Residence Card (Under Pub. L. 99-603), to other Service offices besides legalization offices. Eighty-six comments, representing the views and concerns of 183 individuals, attorneys, state agencies, special interest groups, educational and other interested organizations and associations were received in response to the proposed rule. All comments were reviewed and seriously considered in preparing this interim rule. The Service appreciates the time and significant efforts put forth by all concerned parties.

Summary of the Interim Rule

On November 6, 1986, the Immigration Reform and Control Act of 1986, Pub. L. 99-603 was enacted to provide the opportunity for certain aliens to apply for temporary resident status in the United States, and, under certain conditions, to subsequently apply for permanent resident status.

Section 100.4(f) is amended to provide a list of legalization offices which will accommodate applicants for permanent residence. Several commentors stressed that the Service seriously reconsider the decision to close any legalization office for various reasons such as convenience to the public. The Service has carefully considered decisions to close legalization offices. The volume of application receipts (including Special Agricultural Worker applications) is a main factor studied before a decision is made to close a legalization office. The Service agrees with the commentors that the maximum number of legislation offices should remain open within funding constraints. In addition to the legalization offices listed in § 100.4(f) the following Service offices will conduct interviews for permanent residence.

Eastern Region

District offices—Baltimore, MD; Buffalo, NY; Philadelphia, PA; Portland, ME, and San Juan, PR; Sub-offices—Albany, NY; Charlotte Amalie, VI; Christiansted, VI; Camden, NJ; Hartford, CN; Norfolk, VA; Pittsburgh, PA; St. Albans, VT; and Syracuse, NY.

Northern Region

District offices—Anchorage, AK; Cleveland, OH; Detroit, MI; Helena, MT; Kansas City, MO; Omaha, NB; Portland, OR; Seattle, WA; Denver, CO; and Saint Paul, MN; Sub-offices—Boise, ID; Cincinnati, OH; Indianapolis, IN; Milwaukee, WS; Salt Lake City, UT; St. Louis, MO; and Yakima, WA.

Southern Region

District offices—Atlanta, GA; and New Orleans, LA; Sub-offices—Charlotte, NC; Jacksonville, FL; Louisville, KY; Memphis, TN; and Oklahoma City, OK.

Western Region

District offices—Honolulu, HI; Sub-offices—Agana, GU; Reno, NV; and Tucson, AZ.

Section 103.1(n) is amended to provide for the approval or denial of applications for permanent residence by the district directors at both legalization and other Service offices. Numerous commentors raised concerns about the physical and administrative security of conducting permanent resident interviews at INS district and suboffices. Specific concerns were addressed regarding the possible breach of confidentiality of legalization casework and if district office personnel are used, the lack of experience in legalization matters. During the first phase of the program the Service received numerous compliments for the manner in which the program was handled and for not having breached the confidentiality provisions of the legislation. In developing the permanent resident phase of the legalization program, the Service is once again stressing the confidentiality provisions of IRCA to all employees of the Service. In addition, the public can be assured that wherever possible, the legalization operations at district offices will be separate and distinct operations. However, it must be understood that due to physical restrictions at certain field sites such distinct operation may not be feasible.

Section 103.4(b) is amended to provide for the certification of decisions by the district director as well as the Regional Processing Director to the Administrative Appeals Unit.

Section 103.7(b) is amended to provide for an application fee for the filing of an I-698, Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986). Nineteen comments were received concerning the fee structure proposed for the permanent resident program. Eighteen commentors clearly stated that the application fee of

$75.00 per application was excessive and if the Service held to such an amount that there should be a cap on the fees for a family. After careful consideration and a review of all projected expenditures, the Service will raise the application fee to $80.00 per application but will limit the filing cost for a family to the first three members of a family (including husband, wife, and minor (under 18 years of age) children living at home) for a "family cap" of $240.00 per family. The increase in the per application fee is necessary to offset the creation of a "family cap".

Section 103.37 is removed with the information formally contained in this section now being incorporated into § 299.5.

Section 264.1(c) is amended to provide for the submission of Form I–695, (Application for Replacement of Form I–688A, Employment Authorization, or Form I–688, Temporary Residence Card (Under Pub. L. 99–603)), to legalization and other Service offices. Five comments were received requesting the appeal rights be extended to replacement of temporary resident card (I–688s). This process was established following the standards that currently exist for individuals who submit Applications for Replacement of Alien Registration Receipt Card (I–551). As individuals who will be adjusted will be lawful permanent residents of the United States they will no longer be entitled to the I–688 and would therefore not have a need for replacement. Further, if an individual has his or her permanent resident application denied and any subsequent appeal dismissed they would not be entitled to such documentation. Therefore, after careful consideration the Service will not modify this section.

Section 299.1 is amended to provide for the edition date for Form I–698, Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986).

Section 299.5 is amended to include Form I–698, Application to Adjustment Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99–603); Form I–699, Certificate of Satisfactory Pursuit; and Form I–803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the definition of section 1(b) of EO 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E. O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Authority delegations (Government agencies).

8 CFR Part 103

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

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

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

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

2. Section 100.4(f) is amended by revising the list of legalization offices to read as follows:

§ 100.4 Field service.

* * * * *

(f) * * *

Legalization Offices

Eastern Region

BOS—Boston, MA (XBT)
NEW—Paterson, NJ (XPT)
NYC—Manhattan, NY (XMA)
WAS—Arlington, VA (XAR)

Northern Region

CHI—Chicago, IL (XBI), Chicago, IL (XLS), Forest Park, IL (XLI)
KS—Wichita, KS (XWI)

Southern Region

DAL—Arlington, TX (XDA), Lubbock, TX (XLU)
ELP—El Paso, TX (XEL), Albuquerque, NM (XAL)
HLG—Harlingen, TX (XHA)
HOU—Houston, TX (XHU)
MIA—(Miami) Hialeah, FL (XOP), Tampa, FL (XTA), Fort Lauderdale, FL (XWS)
SNA—Austin, TX (XAU), San Antonio, TX (XSN)

Western Region

LOS—Anaheim, CA (XAH), El Monte, CA (XEM), Los Angeles, CA (XHO), Huntington Park, CA (XHP), Indio, CA (XID), East Los Angeles, CA (XLA), Buena Park, CA (XNK), Oxnard, CA (XOX), Pomona, CA (XPO), Riverside, CA (XRV), Santa Maria, CA (XSM), Santa Ana, CA (XSA), San Fernando, CA (XSR), Gardenia, CA (XTO), N. Hollywood, CA (XVN)
PHO—Phoenix, AZ (XPH), Las Vegas, NV (XLV)
SND—Escondido, CA (XES), San Diego, CA (XSD)
SFR—Bakersfield, CA (XBA) Fresno, CA (XFR), San Francisco, CA (XSF), Salinas, CA (XSI), San Jose, CA (XSO), Stockton, CA (XST)

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

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

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

4. In § 103.1, a new paragraph (n)(3) is added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(n) * * *

(3) Applications for permanent residence filed by legalization applicants pursuant to section 245A may be adjudicated by the district director having jurisdiction over the applicant's residence.

* * * * *

5. Section 103.4(b) is revised to read as follows:

§ 103.4 Certifications.

* * * * *

(b) *Certification of denials of special agricultural worker and legalization applications.* The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in § 103.1(f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

§ 103.7 [Amended]

6. Section 103.7(b)(1) is amended by removing "(fee amount to be determined as required)" for Form I–698, and inserting in its place "A fee of eighty dollars ($80.00) for each application is required at the time of filing with the Immigration and Naturalization Service.

The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be two hundred and forty dollars ($240.00)".

* * * * *

§ 103.37 [Removed]

7. Section 103.37 is removed.

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

8. The authority citation for Part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305; 66 Stat. 173, 191, 223–225; 71 Stat. 641.

9. Section 264.1(c) is amended by replacing all existing text beginning with the fifth sentence which reads "Application by an alien lawfully admitted for temporary residence * * *" with the following:

§ 264.1 [Amended]

* * * * *

(c) * * * Application by an alien lawfully admitted for temporary residence for Form I–688, Temporary Resident Card, in lieu of one lost, stolen, mutilated, or destroyed, shall be made on Form I–695 accompanied by the fee required by § 103.7(b)(1) of this chapter, two color photographs, (regardless of the applicant's age, unless the requirement for such photographs has been waived by the director of the legalization or Service office in his or her discretion because of hardship to an applicant who is confined due to age or physical infirmity), and when issuance of Form I–688 is desired in a changed name, by appropriate documentary evidence of such change. Any Form I–688 in applicant's possession must also be submitted with the application. An application by an alien within the United States for replacement of evidence of registration shall be submitted to the legalization or Service office having jurisdiction over the applicant's place of residence in the United States. Prior to the issuance of Form I–688, all applicants, regardless of age, shall appear at the appropriate legalization or Service office for interview and placement of fingerprint and signature on I–688 unless these requirements are waived at the discretion of the district director because of infirmity, illiteracy, or other compelling reasons. An alien who files application Form I–695 may be required to appear in person before an immigration officer prior to the adjudication of the application and be interviewed under oath concerning his or her registration. In addition, the applicant may also be required to present a completed fingerprint card (Form FD–258). The decision on an application for replacement of evidence of registration shall be made by the Regional Processing Facility director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the Regional Processing Facility director denying the application. An alien outside the United States shall appear at an American Consulate or Service office abroad and present a full account of the circumstances involving the loss or destruction of Form I–688. A cable shall be sent to the Service's Central Office Records Management Branch for verification of status. Subsequent to verification that temporary residence was granted, a transportation letter will be issued to the temporary resident alien.

PART 299—IMMIGRATION FORMS

10. The authority citation for Part 299 continues to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

11. Section 299.5 is amended by adding, in sequential order, Forms I–698, I–699, and I–803 to read as follows:

§ 299.5 Display of control numbers.

* * * * *

I–698	Application to Adjustment Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99–603).	1115–0155
I–699	Certificate of Satisfactory Pursuit.	1115–0154
I–803	Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.	1115–0156

* * * * *

Dated: October 21, 1988.

Richard E. Norton,

Associate Commissioner.

[FR Doc. 88–25025 Filed 10–28–88; 8:45 am]

BILLING CODE 4410–01–M

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8 CFR Part 245a

[INS No. 1022R–88]

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of certain aliens who have been residing illegally in the United States since before January 1, 1982. This section directs the Attorney General to adjust the status of a temporary resident alien to that of an alien lawfully admitted for permanent residence if the alien meets certain requirements. This rule addresses the adjustment of status of temporary resident aliens to that of aliens lawfully admitted for permanent residence.

DATES: Interim rule is effective November 7, 1988. Comments must be received on or before November 30, 1988.

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

FOR FURTHER INFORMATION CONTACT: Raymond B. Penn, Assistant Commissioner, Legalization, (202) 786–3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub. L. 99–603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment of the Immigration and Nationality Act ("INA") in 1952, reflected a resolve to strengthen law enforcement to control illegal immigration. It also reflected the Nation's concerns for certain aliens who had resided illegally in the United States. The theme of this legislation was focused upon regaining control of our Nation's borders and eliminating the illegal alien problem in this country through the firm yet fair enforcement of our Nation's laws.

The Immigration and Naturalization Service took a number of steps to ensure the new legislation would be implemented effectively, efficiently and fairly. Service officials engaged in continuing dialogue with members of the public and representatives of interested organizations on how the legalization provisions of "IRCA" would be implemented. On January 20, 1987, the Service published in the Federal Register a notice making available to the public the preliminary working draft regulation (52 FR 2115). As a result of this notice 164 comments were seriously considered by the Service and were included in the proposed rule published in the Federal Register on March 19, 1987 (52 FR 8752).

In response to the proposed rule, 549 written comments were received. After review and consideration of all comments, the Immigration and Naturalization Service published

implementing regulations for the temporary resident phase of the Legalization Program at 52 FR 1620, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987, 53 FR 9274, March 21, 1988, 53 FR 9862, March 28, 1988, and at 53 FR 23382, June 22, 1988.

The temporary resident phase of the legalization program began on May 5, 1987 and ended on May 4, 1988. The temporary resident phase of the legalization program was the first step for illegal aliens to become full and active members of the American society. The temporary resident phase of the program proved to be an overwhelming success with more than 1,700,000 applicants taking advantage of the opportunity to come out of the shadows.

In order to complete the process of becoming a lawful permanent resident of the United States, individuals who gained lawful temporary resident status during phase I of the legalization program are required to make application for such permanent resident status. Following the same openness as during the first phase of the program, the Immigration and Naturalization Service published a notice of availability of the preliminary working draft of the regulations in the **Federal Register** (53 FR 18096) on May 20, 1988.

The preliminary working draft addressed how the Service would implement the lawful permanent resident phase of the legalization program. More than 170 copies of the preliminary working draft were made available to requestors. As a result of availability of the preliminary working draft, 135 individuals and interested organizations submitted written comments. All comments were reviewed, given serious consideration, and utilized in preparing the proposed rule.

The Immigration and Naturalization Service published a notice of proposed rulemaking on the implementation of the adjustment status phase of IRCA in the **Federal Register** (53 FR 29804) on August 8, 1988. Eighty-six comments, representing the views and concerns of 183 individuals, attorneys state agencies, special interest groups, educational and other interested organizations and associations were reviewed and considered in preparing the final rule. The Service appreciates the time and significant effort put forth by all concerned parties.

Summary of the Interim Rule

The provisions of the proposed rule which received a significant number of comments will be discussed separately. This interim rule amends 8 CFR Part 245a.3 created under the provisions of the May 1, 1987 final rule published in the **Federal Register** at 52 FR 16205. This interim rule includes all changes made from the proposed rule which include the requirements for certain temporary resident aliens, who are otherwise eligible, to adjust their status to that of aliens lawfully admited for permanent residents of the United States and the procedures to be used during this process.

Under the provisions of the Immigration Reform and Control Act of 1986, a temporary resident alien who has resided in the United States for a period of eighteen (18) months may make application for permanent resident status during the twelve month period beginning on the day after the temporary residence period has been completed. Since the beginning date of the application period falls on a weekend, the Service will, for the mutual convenience of all concerned, begin accepting applications on November 7, 1988, the first workday after November 6, 1988. The Service realizes that applications could be received at Regional Processing Facilities prior to November 7, 1988 or prior to the date an alien would be considered eligible to file an application. Therefore, as a convenience to the public, the Service will hold such applications up to 60 days prior to the alien's eligibility date. In these instances, the application will be considered as "filed" on the applicant's eligibility date.

Numerous comments were received addressing concerns with the processing method outlined by the Service in the proposed rule. The commentors stated that by utilizing a direct mail approach the Service would likely lose the consistency of decisions which have come forth during the temporary resident phase of the program; many applications may get lost in the mail; the applicant's due process rights may be violated if the adjudicative decision is rendered at an INS field or legalization office without benefit of "the record"; and the Service should allow filing of applications at legalization and other field offices.

The following summarizes the processing method that was proposed by the Service for the processing of applications for permanent residence during this phase of the legalization program: The Service proposed utilizing a processing method that features direct mail of applications to four Regional Processing Facilities (RPFs) located at Williston, Vermont (Eastern); Lincoln, Nebraska (Northern); Dallas, Texas (Southern); and Laguna Niguel, California (Western). After preliminary processing of applications at the Regional Processing Facilities, applicants will be interviewed at selected Service offices (including district offices, suboffices, and legalization offices) throughout the country. The adjustment of temporary resident aliens to permanent residence will consist of five major segments: Pre-submission of applications; Regional Processing Facility processing (pre-interview); INS field and legalization office processing; Regional Processing Facility processing (post-interview); and Immigration Card Facility (ICF) processing.

In the pre-submission of applications segment the Service will distribute information and forms for the adjustment to permanent resident phase of the legalization program. An extensive publicity and outreach campaign conducted by the Service helped produce the largest legalization program in world history. In response to the proposed rule commentors urged the Service to continue these publicity and outreach efforts for phase II of the legalization program. The Service is confident that awareness of the legalization program is high. In testimony before the Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary United States Senate, the Government Accounting Office reported that a market research study found that 92 percent of undocumented Hispanics were aware that the legalization program exists (over 84% of the legalization phase I applicants were Hispanic). The publicity and outreach campaign for Phase II will be more selective since the Service knows who the temporary residents are and where they reside. This being the case, local level publicity and outreach methods should be very effective and will be used in conjunction with national efforts.

In the Regional Processing Facility (RPF) processing (pre-interview) segment, all pre-interview processing tasks (e.g., data entry, fee receipting, application review, scheduling of interviews, etc.) will take place. If during the review of the application at the Regional Processing Facility it is determined that the applicant has met all eligibility requirements (continuous residence, English language/U.S. history and government, etc.) and there was no indication of fraud in the Phase I, the application may be approved. In this situation, the applicant would be notified of such approval by the RPF and would only be scheduled for processing

at the INS field or legalization office for an Alien legalization office for an Alien Registration Receipt Card (I–551).

In the INS field and legalization office segment, the applicants will be interviewed as well as processed for an Alien Registration Receipt Card (I–551). The interview may include an English language/U.S. history and government examination for those applicants who wish to satisfy the standards for section 312 of the Immigration and Nationality Act.

In the RPF processing (post-interview) segment, appeal processing and other post-interview administrative procedures will occur.

In the final segment, the Immigration Card Facility processing segment, Alien Registration Receipt Card (I–551) production will be completed and the card will be mailed to the address specified by the alien as his or her place of residence.

The Service considers direct mail of applications to a regional facility as a viable and cost effective way of doing its business. The Service has had substantial experience in the direct mail realm and has enjoyed considerable success with the direct mail of adjudicative casework to the Regional Service Centers. This process has achieved reduced processing time, consistency of processing, and has been extremely cost effective. With regard to the due process question, it must be understood that the record will be reviewed in totality prior to the final adjudicative decision. If the final decision is adverse to the applicant, the individual will have the right to submit an appeal through the administrative appeal procedures that have been established. The Service has and will continue to ensure that all applicants will be afforded the rights that they are entitled to. Upon consideration of the comments received the Service will maintain its position of the processing method to be utilized; however, the Service will clearly state that the entire record of proceedings will be reviewed prior to issuing a final adverse decision at an INS field office.

Section 245a.1(h) is being amended to permit intending residents to fulfill employment duties abroad without having their absence from the United States affect their ability to meet applicable residence requirements for adjustment from temporary resident to permanent resident status. The Service received comments suggesting expansion of the definition. These comments were considered and the definition will be changed as proposed to allow the Service the flexibility to permit brief and casual absences from the United States that reflect an intention on the part of the alien to ajust to permanent residence. Section 245a.3(b)(2) will also be amended to reflect this change.

New § 245a.1(r) is being added to define the term "in good-standing" as used in referring to qualified designated entities (QDEs) under 8 CFR 245a.3(b)(5). Numerous comments were received concerning this definition. Several commentors suggested that the Service should extend the cooperative agreements with QDEs while others suggested that the Service should not. The Immigration Reform and Control Act of 1986 (IRCA) in section 201 provides for filing of applications for temporary resident status with either the Attorney General or with a qualified designated entity. The statute does not provide for a like situation for the filing of applications for permanent residence. Consequently, the Service will neither extend nor expand QDE cooperative agreements. Other commentors suggested revisions to the definition. The Service considered these comments and will retain the definition appearing in the proposed rule.

New § 245a.1(s) is being added to define the term "satisfactorily pursuing" as used in section 245A(b)(1)(D)(i)(II) of the Act. Numerous comments were received on this section. In general, most commentors supported the Service's proposal of the various options an applicant could pursue in order to meet the definition. The Service is genuinely concerned that temporary residents enter the mainstream of American society in a fair and equitable manner within the statutory framework provided by the Congress. Comments received on § 245a.1(s)(1) recommended the Service return to the preliminary working draft figure of a minimum 60 hour course instead of the 100 hour course in the proposed rule. Several commentors were concerned that the 100 hour course requirement would financially strain course providers by placing additional demands on teacher and classroom resources. In addition, temporary residents would have to pay more for such courses as the costs would have to be passed on. The Service, therefore, will return to the standard recommended by the study it commissioned and will stipulated a minimum 60 hour course length. Several commentors suggested that completion of 30 hours of a course of study was not responsive to the needs of the legalized alien community and that the Service should consider increasing the minimum attendence time to ensure that students have made true effort and progress to achieve the goals specified by Congress. After serious consideration the Service will modify the minimum requirement by increasing the minimum attendance time to 40 hours of a 60 hour course of study.

Commentors generally supported § 245a.1(s)(2), with the State of New York Department of Education suggesting that the general equivalency diploma (GED) be gained in the English language. The Service feels this suggestion has merit and consequently will accept a GED gained in a language other than English only if the GED English proficiency test has been passed.

Commentors considered proposed § 245a.1(s)(3) unclear and vague. The meaning of the "period of one year" and the lack of specificity regarding the course content were concerns. The Service will rewrite this section to quality the period of one year as one "academic" year as opposed to a calendar year, and will establish that the curriculum experienced by the individual include at least 40 hours of instruction in English and U.S. government.

Comments similar to those received on § 245a.1(s)(3) were received on § 245a.1(s)(4). Commentors were concerned about the adequacy and quality of courses provided by entities not normally associated with education. The Service believes that the certification process provided for will address these concerns and is confident that this section will not provide a means for individuals to avoid fulfilling the "satisfactorily pursuing" requirement.

The Service will also change proposed § 245a.1(s)(5) in response to several worthwhile suggestions. Commentors expressed concern that there exists a wide variety of proficiency among temporary resident aliens and it is not really possible to measure equivalency to a 40 hour enrollment in a designated course. One commentor also questioned the need for a "statement of intent" to pursue further education if the test is to serve as an optional equivalency to a course of study. The Service feels the test option is needed for three reasons: First, to help ease the strain on course provider resources; second, to offer an alternative to temporary resident aliens who have the knowledge and do not need to attend a time-consuming course; and to minimize the length of the Phase II interviews. Consequently, § 245a.1(s)(5) is being rewritten to set the standard that the proficiency test indicate that the applicant possesses the ability to read and understand minimal functional English within the context of the history and government of the

United States. The results must be accompanied by an attestation by the applicant that they had completed at least 40 hours of home study prior to being tested. Home study may be any combination of studies that will allow the applicant to pass a proficiency test established by the Service. The Service also concurs that a statement of intent is not necessary and that provision has been deleted.

New § 245a.1(t) is being added to define the term "minimal understanding of ordinary English" as used in section 245A(B)(1)(D)(i) of the Act. The comments received in response to the preliminary working draft were most favorable and the Service therefore did not change the definition in its proposed rule. Comments received in response to the proposed rule were still generally favorable; however, commenters questioned the inclusion of the term "written communication". The statute provides that applicants meet a basic citizenship skill requirement similar to section 312 requirements of the Immigration and Nationality Act. Indeed, the passing of a "section 312" type examination at the time of interview for permanent residence will serve to relieve the individual of the basic citizenship skill requirement at the time of application to petition for naturalization. The Service feels that the definition as written is appropriate and consistent with Congressional intent that temporary resident aliens acquire an understanding of English.

New § 245a.1(u) is being added to define the use of a curriculum in a course of study recognized by the Attorney General. As with comments received in response to the preliminary working draft, commentors urged the Service to allow for the use of texts similar to the Federal Citizenship Text series (1987 edition). The Service agrees, but will establish a condition that the similar texts be used in addition to but not in lieu of the Federal Citizenship Text series. The Service realizes that there may be training materials, besides the Federal Textbook series that may achieve the goals established under this section. The Service is willing to consider any such material for use in this program. The definition is also changed to reflect the 60 hour course length requirement. Finally, the definition is changed to identify that what is to be taught should be words and phrases in ordinary, everyday usage. This change was made in response to commentors' suggestions for clarification of what is to be taught.

Section 245a.3(a) is being amended to provide for the acceptance of applications at Regional Processing Facilities. A wide range of comments were received concerning this section. Commentors were concerned that temporary residents may not be able to determine when they are eligible to apply for permanent residence. The statute directs that a temporary resident alien can apply for permanent residence during a one-year period beginning on the first day of the nineteenth month after the date of granting of temporary residence. Temporary resident aliens will be able to determine when they can apply by checking the date indicated on the fee receipt Form I–689, which was produced as a result of their application for temporary residence. The service plans to publicize the above information through outreach efforts (e.g., toll-free information number, informational forums, etc.). The Service will also be mailing notices to temporary resident aliens reminding them to file applications for permanent residence. In the proposed rule's supplementary information section the Service stated its intention, as a convenience to the public, to hold applications received at Regional Processing Facilities up to 60 days prior to the alien's eligibility date. This 60 day period did not appear in § 245a.3(a) in the proposed rule as intended. It is therefore added at this time.

Section 245a.3(b)(2) is being amended in two respects. In response to commentors' suggestions the service will expand this section to assist individuals in returning to the United States in compliance with the 30/90 day rule. Individuals will now have the opportunity to establish that absences exceeding 30/90 days were due to emergency reasons or circumstances beyond the alien's control. This section is also changed by replacing the word "or" with "and" where it appears after the term "(30) days," for clarification purposes.

Section 245a.3(b)(3) is being amended to correct an error by changing the paragraph reference from "(f)" to "(g)".

Section 245a.3(b)(4)(ii) is being amended to correct an error by adding the correct paragraph reference (b)(4)(i). This section is also amended in response to comments that the ages of 16 and 65 be calculated from a specific point in time. Several comments were received concerning the Service's proposals to waive the basic citizenship requirements of the Act for applicants under the age of 16, applicants age 65 and older, and applicants physically unable to comply. Most of the commentors supported the Service's exercise of discretion in this matter. Four commentors requested clarification of the term "physically unable" and recommended that the service exempt persons with a developmental or learning disability from these requirements. The service has given these comments serious consideration. However, to extend the exemption to persons with developmental or learning disabilities, on a blanket basis would be inconsistent with the criteria and precedence established in OI 312.1(1)(2)(iii) of the Act, as amended, which holds that an exemption from the ability to speak and understand, as well as read and write English, requires a physical disability of a nature which renders the applicant unable to acquire all four citizenship skills. The service is amending § 245a.3(b)(4)(ii) to conform with this provision.

Two commentors suggested that the upper age parameter for a waiver be reduced from age 65 to age 50 to be consistent with naturalization requirements. Section 245A(b)(1)(D)(ii) of the Act provides an exception for elderly individuals. The statute specifically states that the Attorney General may waiver all or part of the basic citizenship skills requirements in the case of an alien who is 65 years of age or older. Therefore, the upper age limit will remain at 65. However, the service will allow individuals over 50 years of age and who have been living in the United States for at least twenty years to also be exempt from the requirements of section 245A(b)(1)(D)(i) of IRCA. Evidence must be submitted at the time of application for permanent residence pursuant to requirements contained in § 245a.2(d)(3) of this chapter to establish the twenty year qualification. This is consistent with the requirements found in 312 of the INA. Four commentors recommended that the requirements be waived for applicants under the age of 18 or 19. The Statute does not provide an exception for youthful applicants. However, the Service believes that it is fair and reasonable to waive the basic citizenship requirements for applicants under the age of 16.

Two commentors requested clarification of who is eligible for the waiver and one commentor requested clarification as to when the waiver would take effect. Section 245a(b)(4)(ii) is being amended to resolve these two points.

New § 245a.3(b)(4)(iii) is being added to address the examination for basic citizenship skills. Over 40 comments were received concerning this section. In general, commentors felt that the Federal Citizenship Texts were too

difficult for the temporary resident aliens. The Service intends to continue to operate a generous and liberal legalization program as the Congress intended. Consequently, the test questions will be selected from a list of 100 standardized questions developed by the Service instead of the review questions provided at the end of each chapter of the Federal Citizenship texts. Commentors also suggested the Service allow for a 6 month retest period even if an applicant's 12 month period of eligibility expires before the 6 month retest period ends. The Service concurs and will provide for an unrestricted 6 month retest period.

New § 245a.3(a)(4)(iv) is being added to address the providing of a "Certificate of Satisfactory Pursuit" to satisfy the basic citizenship skills requirements. The wording of this section differs from that found in the proposed rule in that, for clarification purposes, the Service enumerates the various forms of evidence an applicant can submit to establish satisfactory pursuit. Several commentors suggested that applicants must be enrolled and attending a recognized course of study at the time of application for permanent residence. The Service cannot agree since it is probable that certain applicants have already attended a recognized course of study. To require applicants to be enrolled and attending a recognized course of study at the time of application would not be reasonable. The Service, therefore, will not change its position on this issue from that stated in the proposed rule.

New § 245a.3(b)(4)(v) is being added to set the time period after which the Service will accept enrollment in a recognized course of study and issuance of Certificates of Satisfactory Pursuit. The Service has set this time period as May 1, 1987 as it is the date the regulations for Phase I of legalization were published in the **Federal Register.**

Section 245a.3(b)(5) of this chapter is being amended to allow for the certification of educational programs by district directors locally as the need arises, as well as the certification of national programs by the Outreach Program of INS. This section is also being amended to clarify the meaning of qualified designated entities as used in this section. Several commentors suggested the Service accept any course providers who have been already certified by State Education Agencies responsible for funding of State Legalization Impact Assistance Grants (SLIAG). The statute places the responsibility for recognizing acceptable courses of study with the Attorney General. The Service, therefore, will not implement this suggestion but will certainly consider the fact that certain course providers have already been certified by State Education Agencies when these course providers petition to the Service for certification.

New § 245a.3(b)(6) is being added to provide for a "notice of participation" to be submitted to the district director by institutions of learning or qualified designated entities in good-standing § 245a.3(b)(5)(i)(A)–(C). Commentors suggested that the Service modify the language to allow greater flexibility in the submission of a "notice of participation". The Service agrees and will provide that notices can also be submitted within thirty (30) days after the creation of the course of study. Concerning the compilation of lists of courses, certain commentors urged the Service to develop the lists at a national level. While the Service agrees in concept it is impractical as such a list would contain hundreds of courses. The Service will, however, provide that the Director of the Outreach Program maintain lists of courses recognized on the national level and will instruct district directors to disseminate district lists as widely as possible.

New § 245a.3(b)(7) is being added to explain the fee structure for courses. Commentors expressed concern that excessive fees not be charged. The Service agrees with these comments and in response will provide that district directors coordinate efforts with State Departments of Education to assist in establishing standard fee schedules. In order to further protect individuals the Service will provide that once a fee is established, any change in fee without prior approval of the district director may result in the decertification of a course provider.

New § 245a.3(b)(8) is being added to provide information on the Federal Textbooks on Citizenship. This section addresses the availability of the Federal Textbooks for interested parties.

New § 245a.3(b)(9) is being added to address the maintenance of student records by course providers. One commentor suggested for clarification purposes that direction be provided in the recording of an individual's name. Consequently, the Service will provide the name of an individual be copied exactly as it appears on the I–688A (Employment Authorization Card) or I–688 (Temporary Resident Card).

New § 245a.3(b)(10) is being added to address the issuance of the Certificate of Satisfactory Pursuit (I–699). Several commentors suggested qualifications in the proposed rule concerning this section. One commentor suggested that the appropriate state agency responsible for SLIAG funding be notified of all decertifications by the district director. The Service agrees and will provide for this notification. Other commentors suggested that the Service accept certificates from course providers who are cited at some point in time after the certificates are submitted for deficiencies or decertified for reasons unrelated to fraud. The Service concurs and will accept such certificates.

New § 245a.3(b)(11) is being added to provide for the "designated official" who will have the authority to sign certificates of satisfactory pursuit. Commentors recommended that the Service change the requirement that the name, title, and sample signature of each designated official be attached to and submitted with each certificate. It was stated that such a practice was burdensome and seemed unnecessary and that a file of such information could be kept by the district director. The Service agrees and will implement this recommendation.

New § 245a.3(b)(12) is being added to provide for the on-site monitoring of courses of study recognized by the Attorney General. Many comments were received which suggested limiting the scope of INS on-site monitoring or delegating the monitoring in whole or in part to other agencies or organizations such as State Departments of Education. The monitoring of course providers is necessary both to ensure that the providers are conducting adequate courses and to ensure that the applicants' needs are adequately served. The Service wishes to work in concert with the various state and local agencies to ensure course instruction is proper and meets the intent of the legislation that applicants achieve a basic understanding of citizenship skills. The Service does not intend to closely monitor established bona-fide educational providers but instead will direct most efforts toward providers who are entering into course instruction for the first time. Commentors also suggested that, as in § 245a.3(b)(10), the appropriate State agency be notified of any decertification taken pursuant to this section. The Service will provide for such notice.

New § 245a.3(b)(13) is being added as guidance for selection of teachers who provide instruction in courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter. Several commentors agreed with the Service's position that the implementation of a set of standards is necessary because courses vary from

providers who have had extensive experience in educational services for limited English speakers to new programs with untested skills.

Section 245a.3(c)(2) is being amended to conform with the statute as it relates to general inadmissibility. The wording of the section will be changed to describe a class of ineligible aliens who are inadmissible to the United States as immigrants except those aliens who are subject to the grounds of exclusion not to be applied for IRCA applicants: 212(a)(14); (20); (21); (25); and (32).

Section 245a.3(d)(1) is amended to provide for the filing of an application for adjustment of status to that of a permanent resident alien by direct mailing of the application to the Regional Processing Facility. Commentors expressed concern over mailing applications to the Regional Processing Facility. The Service feels direct mail is a less costly way to operate the permanent resident application phase of the Legalization Program and in many instances, will be more convenient to the alien public in that applications can be submitted without taking time off work and other activities. Large scale direct mail application operations are utilized by this and other government agencies, and the Service is confident that the direct mail method will operate successfully. The Service realizes however, that local district practices (e.g., drop boxes) may be already in operation for direct mail to Regional Service Centers, or may be added at legalization offices as a convenience to the public. If drop-box service is made available by the district director, the alien public may certainly avail itself of this alternative way to submit applications.

Section 245a.3(d)(2) is amended to provide for the district director or Regional Processing Facility director's use of discretion to temporarily retain documents for forensic examination. Commentors agreed with the Service that the submission of original documents is generally not required. The Service will reserve the right to request original documentation as necessary. Original documentation can either be requested by the director, Regional Processing Facility, or the district director.

Some commentors suggested the Service specify the exact documentation required to support the I–698 application. While the Service appreciates this concern it is not possible to exactly specify what documentation may be required as the documentary needs will vary from case to case.

New § 245a.3(d)(4) is being added to provide for the submission of medical examination results on Form I–693 only for those applicants who applied for temporary residence and submitted an I–693 which did not reflect that a serologic test was performed to determine the presence or absence of antibody against HIV, the etiologic agent of acquired immuno-deficiency syndrome (AIDS). As of December 1, 1987, the Immigration and Naturalization Service required serologic testing for HIV infection as part of the medical examination process for aliens applying for lawful resident status under the provisions of IRCA. Commentors suggested that applicants who filed prior to December 1, 1987 and who submitted an I–693 reflecting that a serologic test for HIV was performed should not be required to submit another I–693. The Service agrees and this section will be worded accordingly. It was also recommended that those applicants who are HIV positive be advised of the opportunity to apply for a waiver of this 212(a)(6) exclusion ground. This recommendation will also be included.

New § 245a.3(d)(5) is being added to provide for the extension of the validity of the temporary resident card (I–688) during the pendency of an application for permanent residence made under this chapter. Commentors agreed but suggested the time period be changed to one (1) year. The Service agrees and this section will be worded accordingly.

New § 245a.3(d)(6) is being added to provide for the adjudication of an application for permanent residence based on the existing record. Commentors were concerned that an applicant may not be afforded due process rights if the entire record was not reviewed prior to the issuance of a denial. The Service will assure applicants of their due process rights and to affirm this point, will provide for the application to be adjudicated based on the existing record rather than denied for lack of prosecution if the applicant does not respond to two requests for additional information and/or documentation.

Section 245a.3(e) is amended to provide for interviews taking place at other than Service Legalization Offices. Commentors were concerned that insufficient interview opportunities would be available for applicants. The Service would like to assure the public that all eligible applicants will be able to complete the legalization process in a timely fashion. Applicants should realize, however, that the legalization program is temporary in nature and it is costly to the Service to reschedule interviews and provide numerous interview opportunities. It is in the mutual interest of all concerned that interview opportunities are kept thus helping to ensure a successful completion of the permanent resident phase of the legalization program.

Concerning § 245a.3(f)(1) commentors questioned how INS could require applicants to demonstrate basic citizenship skills when INA section 212(a)(25) is automatically waived. The regulations reflect IRCA requirements that an alien demonstrate that he or she (1) meets the requirements of section 312 of the INA or (2) is satisfactorily pursuing a course of study. The regulations do not exclude any applicant from eligibility because he or she cannot read. The Congress intended that legalization applicants be familiarized with American society and the basic citizenship skill requirement is indicative of this intent. The Service must implement the statute as written.

Concerning § 245a.3(f)(3) one commentor suggested the Service regulate a waiver for aliens excludable under paragraphs 212(a)(10) of the INA. The statute specifically states that waivers cannot be regulated for this ground of exclusion. The Service, therefore, will make no change in this section.

Numerous comments were received concerning § 245a.3(f)(4). Commentors suggested the Service articulate in this rule the policy of the Service concerning the operation of the special rule for determination of public charge and the determination of financial responsibility. The Service concurs and will amend this portion to include this policy guidance which in effect incorporates a two-tiered evaluation for determining whether the applicant is likely to become a public charge.

Section 245a.3(h) is amended to provide for the retention by a temporary resident alien of the temporary resident card (I–688) in the case of an adverse decision. Commentors agreed with this provision.

One commentor also suggested that applicants be afforded the opportunity to explain discrepancies or rebut any adverse information found between information submitted with the adjustment application and information

previously furnished to the Service. In addition, commentors sought assurance that work authorization would be granted until a final decision had been rendered on an appeal or until the end of the appeal period if no appeal had been filed. Finally, the Department of Health and Human Services requested clarification as to whether an alien would still be considered an "eligible, legalized alien" for the purposes of the administration of SLIAG funding when the appeal period had ended. Such an alien would no longer be considered an eligible legalized alien. The Service agrees with the aforementioned suggestions and will incorporate them in this section.

Section 245a.3(i) is amended to provide for the submission of a brief to support an appeal after the thirty (30) day period allowing for receipt of an appeal has passed. This section is also amended to provide for review of the Record of Processing (ROP) after an appeal has been properly filed. Several commentors suggested longer periods be allowed for submission of appeals. The Service believes the time periods provided are sufficient for a party to submit an appeal and any supporting briefs. Consequently, the Service will not change the appeal periods.

Section 245a.3(k) is amended to provide for certification to the Administration Appeals Unit of decisions of appealed cases subsequently remanded back to either the Regional Processing Facility director of the district director. This section is also amended to provide for certification by district directors. Comments in response to the preliminary working draft were generally in support of the section as written. In response to the proposed rule, commentors recommended that an additional 30 days be allowed for the submission of a brief when a decision has been certified to the AAU for consideration of "usually complex or novel" issues. The Service feels that time provided for the submission of a brief (§ 245a.3(i)) is sufficient and will not change this section.

Section 245a.3(1) is amended to reflect the fact that the adjustment date shall be the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later. Several commentors objected to the Service proposing to have the adjustment date the date of approval of the application for permanent residence. Various valid reasons were cited. These include precedence for rollback afforded to refugees and asylees, consistency with the temporary resident phase of the legalization program, and delays in the adjustment date caused by slow processing.

New § 245a.3(m) is being added to address confidentiality during the permanent residence plans of the Legalization Program. Commentors expressed their concern about confidentiality. The Service desires to reinforce the confidentiality provisions of IRCA and therefore is adding this new section. Several commentors objected to the inclusion of § 245a.3(n)(4), stating that this provision contravenes the statute concerning the use of information supplied by applicants. The Service supports the provision as written, however; the language found in the statute (section 245A(a)(1)(C)) is indicative of Congressional intent that information supplied to the Service by legalization applicants assist in the determination of applications for benefits for relatives of applicants and to support applications for naturalization.

New § 245a.3(n) is being added to provide for the rescission of adjustment of status under section 245a pursuant to the guidelines set forth in section 246 of the Immigration and Nationality Act.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information Collection Requirements contained in this regulation have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. OMB control numbers for these collections are contained in 8 CFR 299.5

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

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

1. The authority citation for Part 245a is revised to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359, 8 U.S.C. 1101 note and Pub. L. 100-204, 101 Stat. 1331.

2. The heading for Part 245a is revised to read as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

3. In § 245a.1, paragraph (h) is revised and paragraphs (r), (s), (t), and (u) are added to read as follows:

§ 245a.1 Definitions.

* * * * *

(h) The term "brief and casual absences" as used in section 245a(b)(3)(A) of the Act permits temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must comply with § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

* * * * *

(r) A qualified designated entity in good-standing with the Service means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989.

(s) "Satisfactorily pursuing," as used in section 245A(b)(1)(D)(i)(II) of the Act, means:

(1) An applicant for permanent resident status has attended a recognized program for at least 40 hours of a minimum 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); or

(2) An applicant presents a high school diploma or general equivalency diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if the GED English proficiency test has been passed; or

(3) An applicant has attended for a period of one academic year, a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. government); or

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively if necessary, as long as enrollment occurred on or after May 1, 1987) by the district director or the Director of the Outreach Program under § 245a.3(b)(5)(i)(D); or

(5) An applicant attests to the fact that they have completed at least 40 hours of home study and passes a proficiency test for legalization, such test being given by qualified administrators (e.g., State Departments of Education and their designated educational agencies) and indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States.

(t) Minimal understanding of ordinary English as used in section 245A(b)(1)(D)(i) of the Act means an applicant can satisfy basic survival needs and routine social demands. The person can handle jobs that involve following simple oral and very basic written communication.

(u) "Curriculum" means a defined course for an instructional program. Minimally, the curriculum prescribes what is to be taught, how the course is to be taught, with what materials, and when and where. The curriculum must:

(1) Teach words and phrases in ordinary, everyday usage;

(2) Include the content of the Federal Citizenship Text series as the basis for curriculum development (other texts with similar content may be used in addition to, but not in lieu of, the Federal Citizenship Text series);

(3) Be designed to provide at least 60 hours of instruction per class level;

(4) Be relevant and educationally appropriate for the program focus and the intended audience; and

(5) Be available for examination and review by INS as requested.

4. Section 245a.3 is revised to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* An alien who has resided in the United States for a period of eighteen (18) months after the granting of temporary resident status may make application for permanent resident status during the twelve month period beginning on the day after the requisite eighteen months' temporary residence has been completed. The date of adjustment to lawful temporary resident status is the date indicated on the fee receipt, Form I–689. The eligibility period for lawful permanent residence under section 245A(b)(1) of the Act will begin on November 7, 1988. Applications received at the Regional Processing Facilities not more than 60 days prior to the beginning of an alien's twelve month application period will be held by the Service and processed but will not be considered properly filed until the beginning of the eligibility period.

(b) *Eligibility.* Any alien physically present in the United States who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been revoked or terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status;

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purposes of this part if, at the time of applying for adjustment from temporary to permanent resident status, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date lawful temporary resident status was granted and the date permanent resident status was applied for, unless the alien can establish that due to emergent reasons or circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)(A) Can demonstrate that the alien either meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or,

(B) Is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4)(i) of this section must be met by each applicant, except for those individuals who are under the age of 16 and those individuals who are 65 years of age or older as of the date of application for permanent residence under this part; or individuals over 50 years of age who have resided in the United States for a least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in § 245a.2(d)(3) of this chapter. These requirements shall also be waived for those who are physically unable to comply.

(iii) (A) Literacy and basic citizenship skills may be demonstrated for purposes of complying with paragraph (b)(4)(i)(A) of this section by speaking and understanding English during the course of the interview and processing for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary literacy level. The test of an applicant's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject matter covered in the revised (1987) Federal Textbooks on Citizenship or other approved training material. The test questions shall be selected from a list of 100 standardized questions developed by the Service. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's

education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowkedge and understanding.

(B) An applicant who fails to pass the English literacy or educational tests at the time of the interview, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests or submit a "Certificate of Satisfactory Pursuit", Form I–699. The second interview shall be conducted prior to the denial of the application for permanent residence and shall be based solely on the failure to pass the literacy requirements. An applicant whose 12-month period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

(iv) To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at § 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(s) (1) and (4) of this chapter; or a high school diploma or General Equivalency Diploma (GED) under § 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(s)(3) of this chapter; or evidence of having passed a proficiency test under § 245a.1(s)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of "Satisfactory Pursuit" may be submitted either at the time of filing Form I–698, or at the time of the interview. An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a "Certificate of Satisfactory Pursuit" must occur subsequent to May 1, 1987.

(5)(i) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if it is sponsored or conducted by:

(A) An established public or private institution of learning recognized as such by a qualified state certifying agency;

(B) An institution of learning approved to issue Forms I–20 in accordance with § 214.3 of this chapter;

(C) A qualified designated entity within the meaning of section 245A(c)(2) of the Act, in good-standing with the Service; or

(D) Is certified by the district director in whose jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally, and

(ii) The course materials for such instruction include textbooks published under the authority of section 346 of the Act.

(6) *Notice of participation.* All courses of study recognized under § 245a.3(b)(5)(i)(A)—(C) which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation either to the district director in whose jurisdiction a local program is conducted or to the Director of the Outreach Program for national programs. The Notice of Participation shall be in the form of a letter typed on the letterhead of the course provider (if available) and contain the following information:

(i) The name(s) of the school(s)/program(s).

(ii) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(iii) The complete names of persons who are in charge of conducting English and U.S. history and goverment courses of study.

(iv) A statement that the course of study will issue "Certificates of Satisfactory Pursuit" to temporary resident enrollees according to INS regulations.

(v) A list of designated officials of the recognized course of study authorized to sign "Certificates of Satisfactory Pursuit", and samples of their original signatures.

(vi) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will not be excessive.

The Notice of Participation must also include evidence of recognition under 8 CFR 245a.3(b)(5)(i) (A), (B), or (C) (e.g., Certification from a qualified state certifying agency; evidence of INS approval for attendance by nonimmigrant students, such as the school code number; or by providing the INS identification number from the QDE cooperative agreement). The Notice of Participation shall be submitted to the district director within thirty (30) days after publication of this interim rule in the Federal Register or within thirty (30) days after the creation of the course of study. Acceptance of "Certificates of Satisfactory Pursuit" may be delayed if the course provider fails to submit the Notice of Participation within the requisite timeframe. Each district director shall compile and maintain lists of recognized courses within his or her district. The Director of the Outreach Program shall compile and maintain lists of courses recognized on the national level.

(7) *Fee structure.* No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in § 245a.3(b) (10) and/or (12) of this section. Once fees are established, any change in fee without prior approval of the District Director may justify de-certification.

District directors will coordinate efforts with State Departments of Education to assist in establishing standard fee schedules.

(8) The Citizenship textbooks to be used by applicants for lawful permanent residence under section 245A of the Act shall be distributed by the Service to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are also available at certain public institutions.

(9) *Maintenance of Student Records.* Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student, for a period of three years from the student's enrollment, the following information and documents:

(i) Name (as copied exactly from the I–688A or I–688);

(ii) A-number (90 million series);

(iii) Date of enrollment;

(iv) Attendance records;

(v) Assessment records;

(vi) Photocopy of signed "Certificate of Satisfactory Pursuit" issued to the student.

(10) *Issuance of "Certificate of Satisfactory Pursuit" (I–699).* (i) Each recognized course of study shall prepare a standardized certificate that is signed by the designated official. The Certificate shall be issued to an applicant who has attended a recognized course of study for at least 40 hours of a minimum of 60-hour course as appropriate for his or her ability level, and is demonstrating progress according

to the performance standards of the English and U.S. history and government course prescribed. Such standards shall conform with the provisions of § 245a.1(s) of this chapter.

(ii) The district director shall reject a Certificate if it is determined that the certificate is fraudulent or was fraudulently issued.

(iii) The district director shall reject a Certificate if it is determined that the course provider is not complying with INS regulations. In the case of non-compliance, the district director will advise the course provider in writing of the specific deficiencies and give the provider thirty (30) days within which to correct such deficiencies.

(iv) District directors will accept Certificates from course providers once it is determined that the deficiencies have been satisfactorily corrected.

(v) Course providers which engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs. INS will not accept Certificates from these providers.

(vi) Certificates may be accepted if a program is cited for deficiencies or decertified at a later date and no fraud was involved.

(vii) The appropriate State agency responsible for SLIAG funding shall be notified of all decertifications by the district director.

(11) *Designated official.* (i) The designated official is the authorized person from each recognized course of study whose signature appears on all "Certificates of Satisfactory Pursuit" issued by that course;

(ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students.

(iii)(A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must specify a "designated official". Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time;

(B) Each designated official shall have read and otherwise be familiar with the "Requirements and Guidelines for Courses of Study Recognized by the Attorney General". The signature of a designated official shall affirm the official's compliance with INS regulations;

(C) The name, title, and sample signature of each designated official for each recognized course of study shall be on file with the district director in whose jurisdiction the program is conducted.

(12) *Monitoring by INS.* (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5).

(B) Verify the existence of curriculum as defined in § 245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that "Certificates of Satisfactory Pursuit" are being issued in accordance with § 245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with § 245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in compliance in accordance with § 245a.3(b)(7).

(ii) If INS has reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provided is not performing according to the standards established in either § 245a.3(b)(10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified. The appropriate State agency shall be notified in accordance with § 245a.3(b)(10)(vii) of this chapter. A copy of the notice of decertification shall be sent to the State agency.

(13) Courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where selection of qualified staff is limited, or where budget constraints restrict options, the following list of qualities for teacher selection is provided as guidance. Teacher selections should include as many of the following qualities as possible:

(i) Specific training in Teaching English to Speakers of Other Languages (TESOL);

(ii) Experience as a classroom teacher with adults;

(iii) Cultural sensitivity and openness;

(iv) Familiarity with competency-based education;

(v) Knowledge of curriculum and materials adaptation;

(vi) And knowledge of a second language.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors in the United States.

(2) An alien who is inadmissible to the United States as an immigrant, except as provided in § 245a.3(g)(1).

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act during the one year period which began with the nineteenth month that begins after the date the alien was granted such temporary status.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(d) *Filing the application.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I–698. The application will be mailed to the designated Regional Processing Facility having jurisdiction over the applicant's residence. Form I–698 must be accompanied by the correct fee and documents specified in the instructions.

(2) The submission of original documents is not required at the time of filing Form I–698. Copies certified as true and complete by a qualified designated entity in good-standing, an attorney, or by an alien's representative in the format prescribed § 204.2(j)(1) or (2) of this chapter may be submitted with Form I–698. Original documents must be presented when requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and complete by such parties and must bear

their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application (I–698) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(4) Applicants who filed for temporary resident status prior to December 1, 1987, are required to submit the results of a serologic test for HIV virus on Form I–693, "Medical Examination of Aliens Seeking Adjustment of Status, (Pub. L. 99–603)", completed by a designated civil surgeon, unless the serologic test for HIV was performed and the results were submitted on Form I–693 when the applicant filed for temporary resident status. Applicants who did submit an I–693 reflecting a serologic test for HIV was performed prior to December 1, 1987 must submit evidence of this fact when filing the I–698 application in order to be relieved from the requirement of submitting another I–693. Applicants having to submit I–693s pursuant to this section are not required to have a complete medical examination. All HIV-positive applicants shall be advised that a waiver is available and shall be provided the opportunity to apply for the waiver.

(5) If necessary, the validity of an alien's temporary resident card (I–688) will be extended in increments of one (1) year until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application deficient in any way shall be returned to the applicant with request for correction, additional information, and/or documentation. If response to this request is not received within 60 days, a second and final request for correction, additional information, and/or documentation shall be made. If the second request is not complied with within 60 days, the application will be adjudicated on the basis of the existing record.

(e) *Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I–551. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview.

(f) *Applicability of exclusion grounds.*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (f)(4) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under section 245A(b)(1) of the Act. In the event that the alien becomes excludable under any provision of section 212(a) of the Act subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

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

(ii) Paragraph (15) (public charge) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under Title XVI of the Social Security Act or section 212 of Pub.L. 93–66 for the month in which such alien is granted lawful temporary residence status under subsection (a);

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

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

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Determination of "Likely to become a public charge" and Special Rule.* Prior to use of the special rule for determination of public charge paragraph (f)(4)(iii) of this section, an alien must first be determined to be excludable under 212(a)(15) of the Act. If the applicant is determined to be "likely to become a public charge," he or she may still be admissible under the terms of the Special Rule.

(i) In determining whether an alien is "likely to become a public charge" financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income, and vocation.

(ii) The Special Rule for determination of public charge paragraph (f)(4)(iii) of this section is to be applied only after an initial determination that the alien is inadmissible under the provisions of section 212(a)(15) of the Act.

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

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public

cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

(g) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exeed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(h) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. Applications for permanent residence under this chapter will not be denied at local INS offices (districts, suboffices, and legalization offices) until the entire record of proceeding has been reviewed. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. If inconsistencies are found between information submitted with the adjustment application and information previously furnished to the Service, the applicant shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I–694. If an application is denied, work authorization will be granted until a final decision has been rendered on an appeal or until the end of the appeal period if no appeal is filed. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding. An alien whose application is denied will not be required to surrender his or her temporary resident card (I–688) until such time as the appeal period has tolled, or until expiration date of the I–688, whichever date is later. After exhaustion of an appeal, an applicant who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted within his or her one-year eligibility period.

(i) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) the appellate authority designated in § 103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility with the required fee within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility. Briefs filed after submission of the appeal should be mailed directly to the Regional Processing Facility. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(j) *Motions.* The Regional Processing Facility director may reopen and reconsider any adverse decision sua sponte. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(k) *Certifications.* The Regional Processing Facility director or district director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded back to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(l) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of filing of the application for permanent residence or the eligibility date, whichever is later.

(m) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof".

(2) No information furnished pursuant to an application for permanent resident status under this section shall be used for any purpose except: (i) To make a determination on the application; or, (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (m)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information contained in granted legalization files may be used by the Service at a later date to make a decision on an immigrant visa petition or other status filed by the applicant under section 204(a), or for naturalization applications submitted by the applicant.

(n) *Rescission.* Rescission of adjustment of status under 245a shall occur under the guidelines established in section 246 of the Act.

Date: October 12, 1988.

Richard E. Norton,

Associate Commissioner.

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H.R. 5050/Pub. L. 100–533

Women's Business Ownership Act of 1988. (Oct. 25, 1988; 102 Stat. 2689; 10 pages) Price: $1.00

H.R. 900/Pub. L. 100–534

West Virginia National Interest River Conservation Act of 1987. (Oct. 26, 1988; 102 Stat. 2699; 10 pages) Price: $1.00

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.