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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-002]

Oriental Fruit Fly, Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations by adding an additional portion of Orange County in California to the list of areas designated as quarantined areas.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operation, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register on October 26, 1987, and effective October 20, 1987 (52 FR 39899-39900, Docket Number 87-138), we added an additional portion of Orange County in California to the list of areas designated as quarantined areas because of Oriental fruit fly. We did not receive any comments, which were required to be postmarked or received on or before December 28, 1987. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

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

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

Within the part of Orange county that is added to the quarantined area, there are approximately 80 small entities that may be affected. These include approximately 60 nurseries, 10 roadside stands and flea markets, 6 fruit and vegetable growers, 2 packing houses, 1 processor, and 1 farmer's market. The vegetable growers have a total 23 acres in production, including 3 acres of avocados, 10 acres of tomatoes, and 10 acres of peppers and cucumbers. The packing houses package citrus fruits and vegetables for both intrastate and interstate markets, but most of the sales by these entities are local intrastate sales and are not affected by this rule. Also, the treatments authorized and the conditions listed in the Oriental fruit fly regulations and the treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

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

Paperwork Reduction Act

This rule contains information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Oriental fruit fly, Incorporation by reference.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 52 FR 39899-39900 on October 26, 1987.

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.52, and 371.2(c).

Done in Washington, DC, this 29th day of February, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-4771 Filed 3-3-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 5; Doc. No. 4981S]

General Crop Insurance Regulations; Texas Citrus Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 crop year, by adding a new section, 7 CFR 401.115 to be known as the Texas Citrus Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on Texas citrus crops in an endorsement to the General Crop Insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: November 30, 1987.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1992.

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

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

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

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

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

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.115, the Texas Citrus Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring citrus in Texas.

The provisions for insuring citrus contained in 7 CFR 401.115 will supersede those provisions contained in 7 CFR Part 413, the Texas Citrus Crop Insurance Regulations, effective with the beginning of the 1989 crop year. The present policy contained in 7 CFR Part 413 will be terminated at the end of the 1988 crop year and later removed and reserved. FCIC is amending the title of 7 CFR Part 413 by separate document so that the provisions therein are effective only through the 1988 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Texas Citrus Endorsement to 7 CFR Part 401, FCIC is changing the provisions for insuring citrus as follows:

1. Section 1—Move Rio Red grapefruit from type III designation to the Star Ruby type IV designation. This change is made to combine varieties with similar characteristics.

2. Section 2—Replace "cyclone" with "excess wind" as an insurable cause of loss. This change is made to insure shear wind of a defined force which more accurately reflects the crop hazard in the area.

3. Section 4—Lengthen the end of the first stage from April 1 to May 1 to allow additional fruit development and to better estimate the potential in determining the second stage guarantee.

4. Section 7—Add unit definition guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies that show an increased risk when units are divided.

5. Section 8—Add a provision to require notice of damage within 72 hours if the cause of loss is excessive moisture. Because evidence of damage from excess moisture is difficult to appraise if too much time passes, this change will better enable FCIC to adjust the loss.

6. Section 12—Add definitions of "excess moisture," and "excess wind." Remove the "cyclone" definition. Replace the definition of "contiguous land" with "non-contiguous land." Non-contiguous land is used as a criterion for unit division.

On Friday, September 18, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 35266, adding a new subpart, 7 CFR 401.115 to be known as the Texas Citrus Endorsement. The public was given 30 days in which to submit written comments, data, and opinions on the rule, but none were received.

In the proposed rule it was determined to add a definition for "yield limit." This definition was intended to mean a yield level established by FCIC based on citrus type and tree age. This definition was added erroneously and is removed from the rule. With the exception of the change noted above, FCIC herewith adopts the rule published at 52 FR 35266 as a final rule.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Texas citrus endorsement.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

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

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.115 Texas Citrus Endorsement, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.115 Texas Citrus Endorsement

The provisions of the Texas Citrus Crop Insurance Endorsement for the 1989 and subsequent crop year are as follows:

Federal Crop Insurance Corporation, Texas Citrus Endorsement

1. *Insured crop.*

a. The crop insured will be any of the following citrus types you elect:

Type I Early and mid-season oranges;

Type II Late oranges (including temples);

Type III Grapefruit, except types IV and V;

Type IV Rio Red and Star Ruby grapefruit; or

Type V Ruby Red grapefruit.

b. In addition to the citrus not insurable in section 2 of the general crop insurance policy, we do not insure any citrus:

(1) Which is not irrigated;

(2) If the producing trees have not produced an average yield of three tons of oranges or

grapefruit per acre the previous year unless the trees are inspected by us and we agree, in writing, to the amount of insurance coverage;

(3) If acceptable production records of at least the previous crop year are not available; or

(4) Which we inspect and consider not acceptable.

2. *Causes of loss.*

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Freeze;

(2) Frost;

(3) Excess moisture;

(4) Hail;

(5) Fire;

(6) Tornado;

(7) Excess wind;

(8) Wildlife;

(9) Failure of the irrigation water supply; or

(10) Direct Mediterranean Fruit Fly damage; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove. We also specifically do not insure against the inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless the refused production has actual physical damage due to a cause specified in subsection 2.a.

3. *Report of Acreage, Share, Type, and Practice (Acreage Report).*

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. The date by which you must annually submit the acreage report is June 30 of the calendar year the insured crop normally blooms.

4. *Production Reporting and Production Guarantees.*

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees; and

(2) The number of trees topped, hedged, or pruned.

b. In lieu of the method described in section 4 of the general crop insurance policy to determine the yield used to compute your production guarantee, your second stage (final stage) production guarantee will be based on our appraisal of current crop potential. This appraisal will be performed on or before insurance attaches.

c. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantees. The stages and production guarantees are:

(1) First stage is from the date insurance attaches until May 1 of the calendar year of normal bloom, the production guarantee will be:

(a) Forty percent (40%) of the yield used to determine the previous year's production guarantee multiplied by the percentage of yield (coverage level) for the current crop year if you had insurance for the previous crop year; or

(b) Forty percent (40%) of your production for the previous year per acre multiplied by the percentage of yield (coverage level) for the current crop year if you did not have insurance for the previous crop year.

(2) Second stage (final stage) is from May 1 of the calendar year of normal bloom until the end of the insurance period, the production guarantee is the final stage production guarantee.

d. Any acreage of citrus damaged to the extent that growers in the area would not further care for the citrus, will be deemed to have been destroyed even though the citrus continues to be cared for. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

5. *Premium.*

The premium amount is computed:

a. For citrus damaged in the first stage to the extent that growers in the area would not further care for the citrus, by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. If subsection 5.a. does not apply, by multiplying the second stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

6. *Insurance Period.*

In lieu of section 7 of the General Crop Insurance Policy, insurance attaches on December 1 prior to the calendar year of normal bloom except if we accept your application for insurance after November 30, insurance will attach on the thirtieth (30th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage inspected by us and determined to be unacceptable. Insurance ends on each unit at the earliest of:

(1) Total destruction of the citrus;

(2) Harvest;

(3) The date harvest would normally start on any acreage which will not be harvested;

(4) Final adjustment of a loss; or

(5) May 31 of the calendar year following the normal year of bloom.

7. *Unit Division.*

a. Citrus acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium as required by the actuarial table and if, for each proposed unit, you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year. The acreage planted to insured citrus must be located in separate legally identifiable sections, the boundaries of the sections must be clearly identified, the insured acreage must be easily determined, and each unit must be non-contiguous. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. *Notice of Damage or Loss.*

In addition to the notices required in section 8 of the general crop insurance policy, if the insured citrus is damaged by excess moisture, you must give us notice of such damage within seventy-two (72) hours of occurrence.

9. *Claim for Indemnity*

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee for the applicable stage (see subsection 4.c.);

(2) Subtracting therefrom the total production of citrus to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any citrus production which is not marketed as fresh fruit and, due to insurable causes, does not contain 120 or more gallons of juice per ton, will be adjusted by:

(a) Dividing the gallons of juice per ton obtained from the damaged citrus by 120; and

(b) Multiplying the result by the number of tons of such citrus. If records of actual juice content are not available, an average juice content will be used.

(2) Where the actuarial table provides for, and you elect the fresh fruit option, citrus production which is not marketable as fresh fruit due to insurable causes will be adjusted by:

(a) Dividing the value per ton of the damaged citrus by the price of undamaged citrus; and

(b) Multiplying the result by the number of tons of such citrus.

The applicable price for undamaged citrus will be the local market price the week before damage occurred, or the contract price if the contract was entered into between the producer and buyer before damage occurred.

(3) Any production will be considered marketed or marketable as fresh fruit unless due to insurable causes, such production was not marketed as fresh fruit.

(4) In the absence of acceptable records to determine the disposition of harvested citrus, we may elect to determine such disposition and the amount of such production to be counted for the unit.

(5) Any citrus on the ground which is not picked up and marketed will be considered lost if the damage was due to an insured cause.

(6) Appraised production to be counted will include:

(a) Unharvested production, and potential production lost due to uninsured causes and failure to follow recognized good citrus farming practices; and

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent.

(7) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and is reappraised by us; or

(b) Harvested.

10. *Cancellation and Termination Dates.*

The cancellation and termination dates are November 30 prior to the calendar year of the normal bloom.

11. *Contract Changes.*

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

12. *Meaning of Terms.*

a. "Crop year" means the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

b. "Direct mediterranean fruit fly damage" means the actual physical damage to the citrus on the unit which causes such citrus to be unmarketable and will not include inability to market such citrus as a direct result of a quarantine, boycott, or refusal to accept the citrus by any entity without regard to actual physical damage to such citrus.

c. "Excess moisture" means that more than 20 inches of precipitation have fallen on the grove within a 72 hour period.

d. "Excess wind" means a natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

e. "Freeze" means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit.

f. "Frost" means the condition that exists when the air temperature around the tree falls to 32 degrees Fahrenheit or below.

g. "Harvest" means the severance of mature citrus from the tree either by pulling, picking, or by mechanical or chemical means, or picking up the marketable fruit from the ground.

h. "Hedged" means to cut back the side branches for better or more fruitful growth.

i. "Non-contiguous land" means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

j. "Topped" means to cut back the upper branches for better or more fruitful growth.

Done in Washington, DC., on February 29, 1988.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-4744 Filed 3-3-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 675]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 675 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 4 through March 10, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 675 (§ 907.975) is effective for the period March 4 through March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, 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 the use of volume regulations on small entities as well as larger ones.

The purpose of the FRA 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 123 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. 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 handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987-88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on March 1, 1988, in Ventura, California, to consider the current and prospective conditions of supply and demand and, by a 6 to 3 vote, recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is good.

Based on consideration of supply and market conditions, and the elvaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.975 is added to read as follows:

§ 907.975 Navel Orange Regulation 675.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 4, 1988, through March 10, 1988, are established as follows:

(a) District 1: 1,700,000 cartons;
(b) District 2: 300,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

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

Dated: March 2, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Disision, Agricultural Marketing Service.

[FR Doc. 88–4870 Filed 3–3–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 603]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 603 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period March 6 through March 12, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 603 (§ 910.903) is effective for the period March 6 through March 12, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: 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 has determined that this action will not have a significant economic impact on a substantial mumber of small entities.

The purpose of the RFA is to fit regulatory action 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 Agricultural Marketing Agreement 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.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on March 1, 1988, in Ventura, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.903 is revised to read as follows:

§ 910.903 Lemon Regulation 603.

The quantity of lemons grown in California and Arizona which may be handled during the period March 6, 1988, through March 12, 1988, is established at 350,000 cartons.

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

Dated: March 2, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–4869 Filed 3–3–88; 8:45 am]

BILLING CODE 3410-02-M

Rural Telephone Bank

7 CFR Part 1610

Rural Telephone Bank Loan Policies

February 25, 1988.

AGENCY: Rural Telephone Bank, USDA.

ACTION: Interim Rule With Request for Comments.

SUMMARY: The Rural Telephone Bank (RTB) hereby amends Part 1610 Loan Policies, Chapter XVI in Title 7 of the Code of Federal Regulations by adding two new sections, 1610.10 and 1610.11. These sections establish the methodology for determining the interest rate on RTB loans and the interest rate to be used in determining loan feasibility. This action implements sections 1411(c) and 1412 of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330), signed into law December 22, 1987, which amends section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.). RTB hereby also deletes paragraph 1610.5(b) and the notation "(a)" for the remaining paragraph under § 1610.5. This action will bring this section into conformance with Pub. L. 100–203.

All borrowers receiving loan fund advances on or after December 22, 1987 under RTB loans approved on or after October 1, 1987 are affected by the addition of § 1610.10 and the deletion of § 1610.5(b).

All borrowers receiving RTB loans supported by a feasibility study dated on or after December 22, 1987, will be affected by the addition of § 1610.11.

DATES: This Interim Rule is effective (the date publication). Public comments concerning this interim rule must be received by REA no later than April 4, 1988.

ADDRESSES: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823—South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 2823 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823 South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9550. The Draft Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, Novemer 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.).

Background

Under present RTB policies and procedures the interest rate on RTB loans is set at the cost of money rate as determined monthly by the Governor, and this monthly rate is used to determine feasibility. Each advance bears interest at the cost of money rate as determined by the Governor, prevailing at the time of such advance.

Public Law 100–203 amended the Rural Electrification Act by establishing a new methodology for the determination of the interest rate on RTB loans and by establishing the interest rate to be used for the purpose of assessing a borrower's eligibility for an RTB loan.

RTB published a final rule in the **Federal Register** on November 13, 1987, providing for the interest rate to be set at the time funds are advanced for all RTB loans approved on or after December 1, 1987. That rule is superseded by this one.

List of Subjects in 7 CFR Part 1610

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA hereby amends 7 CFR Part 1610 as follows:

PART 1610—[AMENDED]

1. The authority citiation for 7 CFR 1610 continues to read:

Authority: 85 Stat. 29 et seq., 7 U.S.C. 941 et seq., as amended at Pub. L. 93–32, 87 Stat. 65 et seq. and Pub. L. 100–203, 101 Stat. 1330, et seq.

§ 1610.5 [Amended]

2. Section 1610.5(b) is removed and the designation "(a)" for the remaining paragraph under § 1610.5 is removed.

3. Sections 1610.10 and 1610.11 are added as follows:

§ 1610.10 Determination of interest rate on Bank loans.

(a) All loan fund advances made on or after December 22, 1987 under RTB loans approved on or after October 1, 1987, shall bear interest at the rate determined as established below, but not less than 5 percent per annum.

(b) The interest rate for the period beginning on the date the advance is made and ending at the close of the fiscal year in which the advance is made shall be the average yield on the date of advance on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance. The interest rate shall be determined to the nearest 0.01 percent.

(1) For this determination, the Bank will use yields on actively traded Treasury issues adjusted to constant maturities obtained from the *Federal Reserve statistical release* ("Treasury rate"). In accordance with standard Treasury procedures, the rate in effect for any given day is the rate set at the close of business on the preceding day. The 30-year Treasury rate will be applied to all advances with a final maturity of at least 30 years from date of advance. A straight-line interpolation between other Treasury rates will be used to determine the rate applicable for advances with final maturities of less than 30 years.

(2) The Bank will notify the borrower in writing of the interest rate that applies to each advance.

(c) After the fiscal year in which the advance is made, the interest rate applied to the advance will be the sum of the calculations made in paragraph (c) (1) through (5) of this section. This interest rate determination shall be made by the Governor within 30 days of the end of each fiscal year and shall be determined to the nearest 0.01 percent.

(1) The aggregate of all amounts received by the Bank during the fiscal year from the issuance of Class A stock, multiplied by the rate of return payable by the Bank during the fiscal year as specified in section 406(c) of the Act, which product is divided by the aggregate of the amounts advanced by the Bank during the fiscal year.

(2) The aggregate of all amounts received by the Bank during the fiscal year from the issuance of Class B stock, multiplied by the rate at which dividends are payable by the Bank during the fiscal year as specified in section 406(d) of the Act, which product is divided by the aggregate of the amount advanced by the Bank during the fiscal year.

(i) The "amounts received by the Bank during the fiscal year from the issuance of Class B stock" means the amount of cash received during the fiscal year for the purchase of Class B stock, plus the amount advanced to borrowers by the Bank during the fiscal year for such purchases.

(ii) "The rate at which dividends are payable" means the total amount of patronage refunds in the form of Class B stock for the fiscal year divided by the total amount of outstanding Class B stock at the end of the fiscal year.

(3) The aggregate of all amounts received by the Bank during the fiscal year from the issuance of Class C stock, multiplied by the rate at which dividends are payable by the Bank during the fiscal year as specified in section 406(e) of the Act, which product is divided by the aggregate of the amounts advanced by the Bank during the fiscal year.

(4) The amounts received by the Bank during the fisal year from each issue of telephone debentures and other obligations of the Bank, multiplied, respectively, by the rates at which interest is payable by the Bank during the fiscal year to holders of each issue, each of which products is divided, respectively, by the aggregate of the amounts advanced by the Bank during the fiscal year.

(5) The amount by which the aggregate of the amounts advanced by the Bank during the fiscal year exceeds the aggregate of the amounts received by the Bank from the issuance of Class A stock, Class B stock, Class C stock, and telephone debentures and other obligations of the Bank during the fiscal year, multiplied by the historic cost of money rate as of the close of the immediately preceding fiscal year, which product is divided by the aggregate of the amounts advanced by the Bank during the fiscal year.

(6) As used in paragraph (c)(5) of this section, the term "historic cost of money rate as of the close of the immediately preceding fiscal year," means the sum of the results of the following calculations:

The amounts advanced by the Bank in each fiscal year during the period beginning with fiscal year 1974 and ending with the immediately preceding fiscal year, multiplied, respectively, by the cost of money rate for the fiscal year (as set forth in Table I for fiscal years 1974 through 1987, and as determined by the Governor in paragraph (C) (1) through (5) of this section for fiscal years after fiscal year 1987), with each product then divided by the aggregate of the amounts advanced by the Bank from the beginning of fiscal year 1974 through the end of the fiscal year just ended.

TABLE I

For advances made in fiscal year—	The cost of money rate shall be (percent)
1974	5.01
1975	5.85
1976	5.33
1977	5.00
1978	5.87
1979	5.93
1980	8.10
1981	9.46
1982	8.39
1983	6.99
1984	6.55
1985	5.00
1986	5.00
1987	5.00

In this table, "fiscal year" means the 12-month period ending on September 30 of the designated year.

(d) A borrower with an RTB loan approved on or after October 1, 1987, and before December 22, 1987, and with funds not fully advanced as of December 22, 1987, may until the next advance under the loan or March 21, 1988, whichever is later, elect to have the interest rate specified in the loan commitment apply to the unadvanced portion in lieu of the rate which would otherwise apply as set forth in § 1610.10(a). A borrower making such an election shall contact, in writing, the applicable Area Office of REA. The Governor shall then adjust the interest rate that applies to the unadvanced portion of the loan accordingly.

(e) If the Bank, pursuant to section 407(b) of the Act, issues telephone debentures to refinance outstanding telephone debentures or other obligations, the Bank shall reduce the interest rate charged on each advance of Bank loan funds made during the fiscal year(s) in which the refinanced debentures or other obligations were originally issued. The reduction shall be for the period beginning on the issue date of the refinancing debentures and ending on the date the advance matures or is completely prepaid, whichever is earlier. This reduction shall be in addition to any other interest rate reduction required by section 408(b)(3) of the Act. The interest rate shall be reduced by the amount which fully reflects that percentage of the funds saved by the Bank as a result of the refinancing which is equal to the percentage representation of the advance to all advances made during the fiscal year(s) involved. In no case, however, shall the interest rate be reduced to less than 5 percent per annum. The interest rate reduction for each advance shall be determined as follows:

(1) The funds saved by the bank as a result of the refinancing shall be computed.

(2) The advance shall be divided by the total of all advances made during the fiscal year(s) involved, and stated to the nearest .01 percent.

(3) The percentage in paragraph (e)(2) of this section is multiplied by the amount in paragraph (e)(1) of this section to determine the savings for a particular advance. The interest rate on that advance is then reduced to fully reflect the savings over the remaining amortization period of the loan from which the advance was made.

(f) Within 60 days after the issue date described in paragraph (e) of this section, the Governor shall amend the loan documentation for each advance described in paragraph (e) of this section, as necessary, to reflect any interest rate reduction applicable to the advance by reason of paragraph (e) of this section, and shall notify each affected borrower of the reduction.

(g) Within 5 days of determining the cost of money rate for a fiscal year, the Governor shall:

(1) Cause the determination to be published in the **Federal Register** in accordance with section 552 of Title 5, United States Code, and

(2) Furnish a copy of the determination to the Comptroller General of the United States.

(h) A borrower should not wait until the end of the fiscal year to submit a requisition for an advance of loan funds if it wants the advance made in that fiscal year. Borrower requisitions submitted late in the fiscal year may not be processed in that fiscal year because of workload and other factors.

§ 1610.11 Interest rate to be considered for purposes of assessing eligibility for loans.

For purposes of determining the creditworthiness of a borrower for a Bank loan pursuant to section 408(b)(4) (i) and (ii) of the Act, the Governor shall assume that the loan, if made, would bear interest at a rate equal to the average yield on the date of determination on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the loan.

(a) The Treasury rate will be used for this determination. The 30-year Treasury rate will be used in all feasibility studies for loans with a final maturity of at least 30 years from the date of the mortgage note between the Bank and the

borrower. A straight-line interpolation between other Treasury rates will be used to determine the rate applicable for feasibility studies for loans with final maturities of less than 30 years.

(b) The Treasury rate will be obtained each Tuesday, or as soon as possible thereafter, from the Federal Reserve. The rate for the current week, from the column labeled "This week" in the *Federal Reserve statistical release*, will be used from that Wednesday through the following Tuesday.

(c) As used in this paragraph, the "date of determination" means the date of the feasibility study used in support of the loan recommendation.

Dated: February 29, 1988.

Jack Van Mark,

Acting Governor, Rural Telephone Bank.

[FR Doc. 88-4719 Filed 3-3-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 70473-7274]

Public Information; Freedom of Information Act

AGENCY: U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce has revised its Freedom of Information Act (FOIA) regulations to add a new section regarding procedures for predisclosure notification of submitters of confidential commercial information as required by Executive Order 12600 of June 23, 1987. Provisions regarding a cut-off date for responsive records, referral of other agency documents, and clarification of the procedure for making disclosable records available have also been added. Several other administrative and procedural changes have been made for editorial purposes, or to reflect recent changes in the organization of the Department.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Geraldine P. LeBoo, Freedom of Information Officer, Office of Management and Organization, (202) 377-3271.

SUPPLEMENTARY INFORMATION: On April 28, 1987, the Commerce Department published a proposed revision to its policies and procedures for handling requests for information under the Freedom of Information Act (FOIA). The portion of this revision pertaining to the assessment of fees (§ 4.9) was issued as a final rule on July 17, 1987 (52 FR 26951). The remainder of this revision is now being published as a final rule. The significant changes included in this final rule are: (1) The addition of a section providing for the predisclosure notification of the submitters of confidential commercial information (§ 4.7); (2) a statement of the Department's policy regarding a cut-off date for responsive records (§ 4.6); and (3) clarification of Department policy and procedure for making disclosable records available, and prereferral consultation (§ 4.6).

Three comments were received regarding these sections of the proposed rule. All of the commenters objected to the inclusion of the section requiring the predisclosure notification of the submitters of confidential commercial information. The principal objection of these commenters was that this requirement would impermissibly extend the time for response to a FOIA request beyond the 10 day period required by statute. Two commenters also objected to the definition of the term "business information" and requested the inclusion of a provision permitting expedited review.

Executive Order 12600 (E.O. 12600) of June 23, 1987, requires each executive agency to establish regulations, after notice and public comment, providing for the predisclosure notification of the submitter of confidential commercial information. Although the Department's proposed rule pertaining to predisclosure notification was published prior to the issuance of E.O. 12600, the proposed procedures were in substantial conformity with the requirements of the Executive Order. Thus, the Department has met the Executive Order's requirement for notice and public comment. The definitions of the terms "confidential commercial information" and "submitter" have been revised to match the definition of those terms in the Executive Order.

Executive Order 12600 requires that the submitter of confidential commerical information be provided with a reasonable period of time within which to object to the disclosure of information. The Department recognizes that allowing the submitter an extended period of time for comment would impair the Department's ability to respond to FOIA requests in a timely fashion. In consideration of the concerns expressed by the commenters, the Department has decreased the time period for a submitter to object to disclosure from 10 to 7 working days. This period willl provide a reasonable time for input from the submitter while not unduly delaying the processing of the request. Since E.O. 12600 does not provide for expedited review, such a provision has not been added to the Department's regulations.

One commenter stated that the use of a cutoff date for determining responsive records would encourage the Department to limit access to responsive records. However, since the FOIA requires the disclosure only of existing records, using the date of receipt as the cut-off for responsive records is reasonable. Finally, one commenter objected to the proposed procedure regarding the referral of other agency records. The Department has determined that this referral procedure will facilitate the timely and accurate processing of records which are originated by and are of primary concern to other agencies. Originating agencies are usually best able to determine the applicability of exemptions to records generated by that agency.

Proposed § 4.8 has been deleted since it has been determined to be unduly restrictive and duplicative of § 4.4 and § 4.6(b). Section 4.6(b)(4) now sets forth the requirements for making disclosable records available. Proposed § 4.9 is renumbered as § 4.8.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation, i.e., those entities that choose to submit requests for records under the Freedom of Information Act. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule is not a major rule for the purpose of Executive Order 12291. This rule does not contain information collection requirements as defined by the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 4

Public information, Freedom of Information.

For the reasons set forth in the preamble, 15 CFR Part 4 is revised to read as follows:

PART 4—PUBLIC INFORMATION

Sec.

4.1 Scope and purpose.
4.2 Policies.
4.3 Definitions.
4.4 Availability of materials for inspection and copying; indexes.
4.5 Requests for records.

Sec.

4.6 Initial determinations of availability of records.
4.7 Predisclosure notification procedures for confidential commercial information.
4.8 Appeals from initial determinations or untimely delays.
4.9 Fees.
Appendix A Department Administrative Order 205–12—Public Information
Appendix B Freedom of Information Public Facilities and Addresses for Requests for Records
Appendix C Officials Authorized to Make Initial Denials of Requests for Records

Authority: 5 U.S.C. 301, 552, 553, Reorganization Plan No. 5 of 1950; 31 U.S.C. 3717.

§ 4.1 Scope and purpose.

(a) This part sets forth the rules of the Department of Commerce whereby the Department and its organizational units are to make publicly available the materials and indexes specified in 5 U.S.C. 552(a)(2) and the records requested under 5 U.S.C. 552(a)(3).

(b) These rules conform to requirements of the Freedom of Information Act, 5 U.S.C. 552; as amended, and supplement Department Administrative Order 205–12, which contains policies, delegations of authority, and other criteria implementing 5 U.S.C. 552. DAO 205–12 is attached as Appendix A to this part.

(c) Certain units of the Department other than those identified in § 4.4(d) have, pursuant to delegated authority and for appropriate reasons, established their own facilities for the public inspection and copying of records. The units have provided for separate locations to which requests for records are to be made. These facilities and locations are identified in Appendix B to this part. The units may publish in the **Federal Register** supplementary rules in addition to but not inconsistent with this part, DAO 205–12, and the rules and regulations contained in their respective chapters of the Code of Federal Regulations or otherwise in the **Federal Register**. These supplementary rules shall be maintained in the central public reference facility identified in § 4.4(c), where information about them may be obtained.

§ 4.2 Policies.

(a) Department Administrative Order 205–12 contains the basic policies and other criteria to be considered in issuing and administering these rules.

(b) Requests for records made under 5 U.S.C. 552(a)(3) apply only to existing records. The Department is not required, in response to a request, to create records by combining or compiling information contained in existing records, to program or reprogram computers, or otherwise to prepare new records. Departmental officials may, upon request, provide or create new information in record form pursuant to user charge statutes, such as 15 U.S.C. 1525–27, or in accord with authority otherwise provided by law.

§ 4.3 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 551 shall have the same meaning herein.

(b) As used in this part, "Act" means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(c) The terms "Office of the Secretary" and "operating unit", as explained in Department Organization Order 1–1, "Mission and Organization of the Department of Commerce (35 FR 19704, December 27, 1970), are defined as follows:

(1) The "Office of the Secretary" is the general management arm of the Department and provides the principal support to the Secretary in formulating policy and in providing advice to the President. It provides program leadership for the Department's functions and exercises general supervision over the operating units. It also directly carries our program functions as may be assigned by the Secretary from time to time, and provides, as determined to be more economical or efficient, administrative and other support services for designated operating units.

(2) An "operating unit" is an organizational entity outside the Office of the Secretary charged with carrying out specified substantive functions (i.e. programs) of the Department. The operating units constitute the components of the Department through which most of its substantive functions are carried out.

(d) The term "unit"as used in this part means (1) an operating unit of the Department, and (2) each Secretarial officer and the persons and the Departmental officers reporting to a Secretarial officer.

§ 4.4 Availability of materials for inspection and copying; indexes.

(a) The Assistant Secretary for Administration has established and maintains a central public reference facility available to units of the Department, at which place the following materials of those units utilizing the facility shall be made available for public inspection and copying:

(1) Final opinions and orders, including concurring and dissenting opinions, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the participating organizations and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Current indexes providing identifying information for the public as to any matter which was issued, adopted, or promulgated after July 4, 1967, and is required by 5 U.S.C. 552(a)(2) to be made available or published;

(5) Records of the final votes of each member in every proceeding of an agency comprised of more than one member.

(6) Rules and decisions denying requests for records which otherwise implement or relate to the Act; and

(7) Materials published in the **Federal Register** pursuant to 5 U.S.C. 552 (a)(1) and such other materials which each unit may consider desirable and practical to make available for the convenience of the public.

(b) The Secretary of Commerce has determined (DAO 205–12, subparagraph 5.02a.5), that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). Upon request, copies of such indexes shall be provided at a cost not to exceed the direct cost of duplication and mailing, if required.

(c) The central facility established by the Assistant Secretary for Administration is the Central Reference and Records Inspection Facility, Room H6628, Department of Commerce Building, 14th Street between Constitution and Pennsylvania Avenue NW., Washington, DC 20230. The facility is open to the public Monday through Friday of each week, except on official holidays of the Federal Government, between the hours of 9 a.m. and 4:30 p.m. There are no fees or formal requirements for inspection of materials. Equipment for making copies of these materials is available for use by the public. Copies of various Commerce Department materials regularly available for sale by the Department may be purchased at the facility. Information about these materials can also be obtained at this facility. Correspondence concerning materials available at the facility or information about the rules implementing the Act may be sent to the above address. The telephone number of the facility is (202) 377–3271.

(d) The following units of the Department are participating in the use of this central facility: All components of the Office of the Secretary of Commerce.

(e) Other units of the Department which have established separate public reference facilities, listed in Appendix B to this part, may publish rules applicable to the services provided therein for public inspection and copying of materials, provided such rules are not inconsistent with the part.

§ 4.5 Requests for records.

(a) A request for a record (or information contained therein) of the Department which is not customarily made available to the public as part of the Department's regular informational services or which is not available in a public reference facility described in § 4.4(c) or Appendix B to this part, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request" to distinguish it from other mail to the Department. Each such request, so marked, shall be addressed to the unit of the Department identified in Appendix B to this part which the requester knows or has reason to believe is responsible for the records requested. If the requester in not sure which is the responsible addressee unit, it shall address the request to the central facility identified in § 4.4(c), or obtain advance information from that facility as to which is the responsible addressee unit.

(b) Any request for records which is not marked and addressed as specified in paragraph (a) of this section will be so marked and addressed by Department personnel and forwarded immediately to the responsible unit having possession or control of the records requested or having primary concern with such records. A request which is improperly addressed by the requester will not be deemed to have been "received" for purposes of the time period set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that (1) forwarding of the request to the responsible unit has been effected, or (2) such forwarding would have been effected with the exercise of due diligence by Department personnel. In each instance when a request is forwarded, the responsible unit receiving it shall notify the requester that the request was improperly addressed and of the date the request was received by the unit.

(c) Requesters must reasonably describe the records sought. A request for records shall identify the records sufficiently to enable Department personnel familiar with the subject matter to locate them with a reasonable amount of effort. The requester shall, to the extent possible, furnish specific descriptive information regarding date and place the records were made, the file descriptions, subject matter, persons involved, and other pertinent details that will help identify the records. If the request relates to a matter in pending litigation, the court, location, and case shall be identified. When more than one record is requested, the request shall clearly describe each specific record, and the specific information requested when is contained in the record, so that its availability may be separately determined. When appropriate, the requester shall describe the intended use of the requested records. Employees at a facility or at a specific address listed in Appendix B will assist the public to a reasonable extent in framing a request.

§ 4.6 Initial determinations of availability of records.

(a) The responsible unit which receives a request for records shall promptly log the receipt of the request, and within ten days of its receipt (including Saturdays, Sundays, and legal public holidays) shall initially determine:

(1) Whether the request is for records under the Act, is for materials available otherwise than under the Act, or is for information not contained in existing records and, therefore, not under the Act. The requester shall be promptly notified in writing how the request is being handled when it does not come within the Act.

(2) Whether the records requested are reasonably described and can be located on the basis of the information supplied by the requester. If any of the records requested cannot be identified and located from the information furnished, the unit shall promptly so inform the requester in writing, specifying what additional identification is needed to assist the unit in locating the record, and offering to assist the requester to reformulate the request.

(3) Whether the records no longer exist, or are not in the unit's possession. The unit should, if it knows which unit of the Department or other agency may have the records, forward the request to it. In each instance, the unit shall promptly notify the requester in writing.

(4) Whether the requested records are the exclusive or primary concern of another executive agency. If so, the unit shall refer the request and the responsive records to that other agency for further action under its rules, and promptly notify the requester in writing of this referral. When the subject matter of a classified record originated by another agency indicate that disclosure of the identity of orginating agency might itself compromise national security, that agency shall be consulted prior to any referral of the responsive records.

(5) Whether the request is a categorical one. A categorical request, i.e., one for all records falling within a reasonably specific but broad category, shall be regarded as conforming to the statutory requirement that records be reasonably described, if the particular records can be identified, searched for, collected and produced without unduly burdening or disrupting the unit's operations. If the categorical request does not reasonably describe the records requested, the unit shall promptly notify the requester in writing specifying what additional identification is needed, and extend to the requester an opportunity to confer with Department personnel to attempt to reformulate the request so as to reasonably describe the records.

(6) In determining records responsive to a request a unit ordinarily shall include only those records within a unit's possession and control as of the date of its receipt of the request.

(7) In each of the situations set forth in paragraphs (a) and (b) of this section, the procedures relating to fees described in § 4.9 shall be applied and coordinated as appropriate.

(b) An authorized official in the responsible unit shall review the request to determine the availability of the records requested.

(1) The determination shall be made within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request (as defined in § 4.5(b) of this part), unless the time is extended as provided in paragraph (b)(2) of this section.

(2) In unusual circumstances, an appropriate official authorized to make initial denials of requests may extend the time for initial determination for up to ten days (excluding Saturdays, Sundays and legal public holidays) by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be sent. Extensions of time for the initial determination and extensions of time on appeal may not exceed a total of ten days, and time taken for the former counts against available appeal extension time. "Unusual circumstances" means, but only to the extent reasonably necessary to the processing of a particular request:

(i) The need to search for and collect the requested records from field

facilities or other establishments that are separate from the office processing the request;

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

(iii) The need for consultation, which shall be conducted with all practical speed, with another agency or unit having a substantial interest in the determination of the request, or among two or more components of the responsible unit having substantial subject-matter interest in the pertinent documents.

(3) If no determination has been sent to the requester at the end of the initial ten day period, or the last extension date, the requester may consider the request to be initially denied, and exercise a right of appeal of the denial. When no determination can be made within the applicable time period, the responsible unit shall nevertheless exercise due dilligence in continuing to process the request. It shall, on expiration of the applicable time period, inform the requester of the reason for the delay, of the date a determination is expected to be sent, and of the requester's right to treat the delay as a denial and to appeal. It may ask the requester to go an appeal until a determination is made.

(4) If it is determined that the records requested are to be made available, and there are no further fees to be paid, the responsible official shall promptly notify the requester as to how the disclosable records will be made available. If there are fees still to be paid by the requester, the requester shall be notified that upon payment the records will immediately be made available.

(5) Appendix C lists the limited number of officials who have been authorized to make initial denials of requests for records, except as may be subsequently authorized. A reply initially denying, in whole or in part, a request for records shall be in writing, signed by an authorized official, and it shall include:

(i) A reference to the specific exemptions of the Act authorizing the withholding of the records, stating briefly why the exemption applies and, where relevant why a discretionary release is not appropriate.

(ii) The name and title or position of each official responsible for the denial.

(iii) A statement of the manner in which any reasonably segregable portion of a record shall be provided to the requester after deletion of the portion which is determined to be exempt.

(iv) A brief statement of the right of the requester to appeal the determination to the General Counsel and the address to which the appeal should be sent, in accordance with § 4.8 (a) and (b).

(6) A copy of each initial denial and its incoming request for records shall be provided to the Assistant General Counsel for Administration.

§ 4.7 Predisclosure notification procedures for confidential commercial information.

(a) *General Policy.* Confidential commercial or financial information provided to the Department of Commerce by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* (1) The term confidential commercial or financial information means records provided to the Department by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm to the submitter.

(2) The term "submitter" means any person or entity who provides confidential commercial or financial information to the Department. The term "submitter" includes, but is not limited to corporations, state governments and foreign governments.

(c) *Notice to submitters.* A unit of the Department of Commerce shall provide a submitter with prompt written notice of a request for disclosure of confidential commercial or financial information whenever required under paragraph (d) of this section. Such written notice shall be sent via certified mail, return receipt requested, or any other expeditious manner which provides for documentation of receipt of such notice. The notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential information.

(d) *When notice is required.* (1) For confidential commercial or financial information submitted to the Department prior to January 1, 1988, the unit shall provide a business submitter with notice of a request whenever:

(i) The records are less than ten years old, and the information has been designated by the submitter as confidential commercial or financial information;

(ii) The Department has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(iii) The information is the subject of a prior express commitment of confidentiality given by the Department to the submitter.

(2) For confidential commercial or financial information submitted to the Department on or after January 1, 1988, the unit shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(ii) The unit has reason to believe that disclosure of the information could reasonably be expected to result in substantial competitive harm to the submitter.

(3) When a business submitter has designated commercial or financial information as confidential, notice of a FOIA request for such information shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter that the information at issue is in fact confidential commercial or financial information which has not been disclosed to the public.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, a unit shall afford a business submitter 7 working days from date of receipt of such notice within which to provide the unit with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information is considered to be commercial or financial information is likely to cause substantial competitive harm to the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. Whenever notice is given to a submitter under this section the requester shall be advised that the submitter has been provided with notice and an opportunity to object to disclosure.

(f) *Notice of intent to disclose.* A unit shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial or financial information.

Whenever a unit decides to disclose information over the objection of a submitter, the unit shall forward a written notice to the submitter which includes:

(1) A statement of the reasons why the submitter's objections to disclosure were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date. Notice of intent to disclose shall be forwarded to the submitter via certified mail, return receipt requested. Such notice shall state the unit's intent to disclose the information on the expiration of 7 working days from the date of the submitter's receipt of the notice. When notice of intent to disclose is provided to the submitter, the requester shall be advised of such notice and of the specified disclosure date.

(g) *Notice of FOIA lawsuit.* Whenever a requester brings a legal action seeking to compel disclosure of information subject to the notice requirements of paragraph (d) of this section, the unit shall promptly notify the submitter.

(h) *When notice is not required.* The notice requirements of this section shall not apply if:

(1) The Department determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The disclosure is required by an agency rule which: (i) was adopted pursuant to notice and public comment; (ii) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act; and (iii) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(5) The designation made by the submitter of confidential commercial or financial information appears obviously frivolous, except that the Department must provide the submitter with written notice of any final administrative disclosure determination 7 working days prior to the specified disclosure date.

§ 4.8 Appeals from initial determinations or untimely delays.

(a) When a request for records has been initially denied in whole or in part, or has not been timely determined, or when a requester has received an adverse initial determination regarding any other matter under this regulation, the requester may submit a written appeal within thirty calendar days after the date of the written denial or, if there has been no determination, on the last day of the applicable time limit. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(b) An appeal shall be addressed to the General Counsel, Department of Commerce, Room 5882, 14th and Constitution Avenue NW., Washington, DC 20230. Both the appeal envelope and the letter shall be clearly marked "Freedom of Information Appeal." An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the General Counsel. An appeal incorrectly addressed will not be deemed to have been "received" for purposes of the time period for appeal set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that forwarding to the General Counsel has been effected; or such forwarding would have been effected with the exercise of due diligence by Department personnel. In each instance when an appeal is so forwarded, the Office of General Counsel shall notify the requester that the appeal was improperly addressed and of the date the appeal was received by the office.

(c) The General Counsel shall make a determination on an appeal within twenty days (excluding Saturdays, Sundays and legal public holidays) of its receipt, unless an extension of time is taken in unusual circumstances, when the time for action may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any days of extension granted at the initial request level. A notice of such extension shall be sent to the requester, setting forth the reasons and the date on which a determination of the appeal is expected to be sent. As used in this paragraph, "unusual circumstances" are defined in § 4.6(b)(2).

(d) If a decision on appeal is to make the records available to the requester in part or whole, such records shall be promptly made available as provided in § 4.4.

(e) If no determination of an appeal has been sent to the requester within the twenty day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to such request, giving rise to a right of judicial review as specified in 5 U.S.C. 552(e)(4). When no determination can be sent to the requester within the time limit, the General Counsel shall nonetheless exercise due diligence in continuing to process the appeal. When the time limit expires, the requester shall be informed of the reason for the delay, of the date when a determination may be expected to be made, and of his right to seek judicial review. The requester may be asked to forego judicial review until the appeal is determined.

(f) A determination on appeal shall be in writing and, when it denies records in whole or in part, the notice to the requester shall include:

(1) Identification of the specific exemption or exemptions of the Act authorizing the withholding, a brief explanation of how the exemption applies, and, when relevant, a statement as to why a discretionary release is not appropriate;

(2) A statement that the decision is final for the Department;

(3) Advice that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are located, or the District of Columbia; and

(4) The names and titles or positions of each official responsible for the denial of the appeal.

(g) The General Counsel shall send a copy of each determination on appeal to the central public reference facility referred to in § 4.4(c) where it will be indexed and kept available for public inspection and copying.

§ 4.9 Fees.

(a) *Definitions.* The following definitions are applicable to this section.

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

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such

activity should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (see paragarph (a)(4) of this section). Searches may be done manually or by computer using existing programming.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

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

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular products or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization is they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Department may also look to the past publication record of a requester in making this determination.

(b) *Application—Uniform Fee Schedule.* The fees described in this section apply to FOIA requests processed by all units of the Department. They reflect rates for the full allocable direct cost of search, review, and duplication. The fees to be charged shall be based on the requester category.

(1) The four specific categories and chargeable fees are:

Category	Chargeable service
(i) Commercial Use Requesters.	Search, Review, and Duplication.
(ii) Educational and Noncommercial Scientific Institution Requesters.	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media.	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters ..	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Category	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search ...	Actual direct cost, including operator time.
(iii) Duplication of records:.	
(A) Paper copy reproduction.	$.07 per page.
(B) Computer tape or printout reproduction.	Actual cost, including operator time.
(C) Other reproduction (i.e., microfilm, microfiche, microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, i.e. excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Charging interest.* Interest may be charged to those requesters who fail to pay fees charged in a timely fashion. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest will be charged at the rate specified in section 3717 of title 31 U.S.C. and will accrue from the date of the billing. The Department reserves the right to utilize consumer reporting agencies, and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (Pub. L. 97-365).

(c) *Waiver or reduction of fees.* (1) Documents shall be furnished without charge, or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. To assure that the two basic requirements for waiver are met, Commerce shall reply on the following factors in making a determination on the fee waiver request:

(i) The subject of the request (whether the subject of the requested records concerns the operations or activities of the government);

(ii) The informative value of the information to be disclosed (whether the disclosure is likely to contribute to an understanding of government operations or activities);

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure (whether disclosure of the requested information will contribute to public understanding);

(iv) The significance of the contribution to public understanding (whether the disclosure is likely to contribute significantly to public

understanding of government operations or activities);

(v) The existence and magnitude of a commercial interest (whether the requester has a commercial interest that would be furthered by the requested disclosure);

(vi) The primary interest in disclosure (whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester).

(2) Additionaly, a fee shall not be charged, or alternatively it may be reduced, in the following instances:

(i) Requests for Department records made by a Federal agency, Federal court (excluding parties), Congressional committee or subcommittee, the General Accounting Office, or the Library of Congress, are not made under the Act, and fees payable under this Part do not apply.

(ii) The records are requested by a state or local government, an intergovernmental agency, a foreign government, a public international organization, or an agency thereof, and when it is determined by a responsible Department official that it is an appropriate courtesy, or the records are for purposes that are in the public interest and will promote the objectives of the Act and of the Department.

(iii) A fee shall not be charged if the allowable charges are less than or equal to the cost of routine collection and processing of the fee. Therefore, if the total of charges due for processing a request is $20 or less, no fee will be charged.

(d) *Payment of fees.* The following conditions shall apply to payment of fees charged under this part.

(1) A search fee provided in paragraph (b) of this section is chargeable even when no records responsive to the request are found, or when the records requested are determined by the responsible Department official to be totally exempt from disclosure. If the estimated search or duplication charges exceed $25 the requester shall be notified of the estimated amount of search or duplication fees, unless the requester has previously advised the Department of a willingness to pay an amount sufficient to cover the estimated fee. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request in order to reduce the cost.

(2) A requester may be required to make an advance payment (i.e., payment before work is commenced or continued on a request) if the estimated or determined allowable charges that a requester may be required to pay will exceed $250 or the requester has previously failed to pay a fee charged in a timely manner (i.e., within 30 days of the date of the billing).

(i) When the estimated charges exceed $250, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees. If the requester has no history of prompt payment of FOIA fees, the Department shall require an advance payment of an amount up to the full estimated charges.

(ii) If a requester has previously failed to pay a fee charged in a timely manner, the Department shall require the requester to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the Department will process the request.

(3) Whenever the Department acts pursuant to paragraph (d)(2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) will begin only after the agency has received payment of the required fee.

(4) Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records or a portion of the records are made available to the requester.

(5) Payment of fees shall be made in cash or preferably by check or money order payable to "Treasury of the United States", and they shall be paid or sent to the unit stated in the billing notice or, if none, to the unit handling the request. Where appropriate, the responsible official may require that payment be made in the form of a certified check.

(6) If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester.

(7) When the responsible official reasonably believes that a requester or group of requesters acting in concert is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the unit may aggregate any such requests and charge accordingly.

(e) *Other charges.* (1) This part does not apply to any special statistical compilation, study, or other record requested pursuant to statutes specifically providing for setting the level of fees for particular types of records such as 15 U.S.C. 1525–1527. The fee for the performance of such service is the actual cost of the work involved in compiling the record. All monies received by the Department in payment of the cost of this work are deposited in a separate account administered under the direction of the Secretary, and may be used to defray the ordinary expenses incidental to the work.

(2) The full cost of other special services will be assessed. Such services would include:

(i) Certifying that records are true copies; and

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

Appendix A—Department Administrative Order 205–12—Public Information

Section 1. *Purpose*—.01 This order, and the rules and other materials which implement it, are designed to carry out the responsibilities of the Department of Commerce under the Freedom of Information Act, as amended (5 U.S.C. 552), hereinafter referred to as "the Act."

02. This revision updates and clarifies the provisions of the order (dated June 29, 1967) which it supersedes, in light of the amendments to the Act which become effective February 19, 1975. Section 7, "Compulsory Process Requesting Documents or Testimony" contained in the superseded order, is now found in Department Administrative Order 218–5, to be published separately in the **Federal Register.**

Sec. 2 *Authorities*—This order is issued pursuant to the Act; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and other authority vested by law in the Secretary applicable to the dissemination of records and other information of the Department and charges for services related thereto.

Sec. 3. *Policies*—.01 The Department of Commerce, in fulfilling its statutory missions to foster, promote and develop the foreign and domestic commerce of the United States and to administer the specific programs entrusted to it, regularly develops, collects, analyzes, and disseminates facts, statistics, consensus, charts, scientific findings, technology, and other information, and performs other services, in order to assist the business community and other segments of the public, according to their needs and interest. This information which the Department develops, collates, and disseminates is generally made readily available, either without charge or by purchase, to the affected persons and to anyone else who may be interested, through publications, reprints of regulations (by subscription or otherwise), press releases, special reports, correspondence and personal interviews or conferences with staff, speeches, and other media. It is the policy of the Department to continue its regular practices of disseminating information to the public prepared as a part of its program responsibilities, to the fullest extent legally permissible and economically feasible, and to continue to handle public requests for such information (which may include records) in the usual manner through its regular facilities

and channels, as distinguished from those requests for records subject to 5 U.S.C. 552(a)(3) which are to be made and handled in accord with the rules established in and pursuant to subsections 5.03 and 5.04 of this order.

In carrying out this policy, the officials designated in subsection 4.01 of this order shall: (a) Establish and continue an effective program of communicating to the public the useful information obtained or developed in the fulfillment of their organizational missions; (b) publicize the availability of such informational materials in their rules or by other practical means so that the public shall utilize the regular informational programs of the Department, rather than resorting to the formal procedures for requesting records established pursuant to 5 U.S.C. 552(a)(3); and (c) insure that any such information which is given to individuals or special groups shall also be made available to the general public in accord with subsections 5.01 and 5.02 of this order, when and to the extent such information is subject to publication or inspection under 5 U.S.C. 552(a)(1), (2), or (5).

.02 Officials responsible for determining, in accord with the Act and this order:

(a) What materials are to be published in the **Federal Register**; (b) What and how materials are to be made available for public inspection and copying, including indexing; and (c) What and how records which are requested are to be made available; shall, where discretion exists in making such determinations, take an affirmative and constructive view of the requirements of the Act. Accordingly, in making rules and specific determinations, they shall among other factors: (1) Provide such information to the affected public as well as enable it to deal effectively and knowledgeably with their organizations; (2) keep within the limits of demonstrable need the use of the legal authorities which permit the withholding of information and records; (3) apply principles of equal treatment to requests for records; (4) consider disclosure to be the rule rather than the exception; (5) consider the public convenience as well as the efficient conduct of their organizations' business; (6) act in a timely manner; and (7) be guided by materials prepared by the Department of Justice and the Office of General Counsel of the Department, and by applicable court decisions.

Sec. 4. *Delegation of authority.*

.01 The Secretary of Commerce is responsible for the effective administration of the Act and other laws applicable to the dissemination of records and other information of the Department. Aside from the Secretary's retaining authority for his immediate office, or as he otherwise may act, authority is hereby delegated to the following officials of the Department to decide initially whether or not to make publicly available records and other information subject to the Act which are in the possession of their organizations, in accord with the provisions of the Act, this order and rules supplementing it, other applicable law, and as may be otherwise provided by the Secretary:

a. Secretarial Officers, for their respective offices and for the Department staff units reporting to them (as defined in Department Organization Order 1-1, "Mission and Organization of the Department of Commerce" (35 FR 19704, December 27, 1970)), as amended.

b. Heads of operating units of the Department (as defined in Department Organization Order 1-1).

02. Although the officials having authority under subsection 4.01 of this section may permit employees within their organizations to make records and information publicly available under the Act, they shall redelegate authority initially to deny such records and information only to a limited number of officers or employees under them without power of further redelegation.

03. The authority to make final decisions on appeal of initially denied requests for records is hereby delegated to the General Counsel of the Department without power of further redelegation.

.04 The General Counsel of the Department, and his designees, shall provide legal services to enable the officials designated in subsections 4.01 and 4.02 of this section to discharge their respective duties and responsibilities under and pursuant to this order, and shall make legal interpretations of questions arising thereunder. The General Counsel shall also act as the focal point within the Department for consultation or other communication with the Department of Justice with respect to any actions to be taken in connection with the Act, this order, and rules implementing it.

.05 Program officials shall provide all support and assistance necessary to enable the General Counsel to perform the functions delegated in this order. This shall include (i) keeping the Office of the General Counsel informed of Freedom of Information Act requests received by the unit; (ii) providing prompt responses to Office of the General Counsel instructions, or requests for assistance; (iii) as requested, allowing the Office of the General Counsel access to relevant records; and (iv) promptly consulting with the Office of the General Counsel regarding any legal issues which arise during the processing of a request.

b. The Office of the Inspector General shall comply with the provisions of this order except that the Office of the Inspector General need not allow the Office of the General Counsel access to records to the extent that (i) information contained therein might reveal the identity of a confidential source, or (ii) the Inspector General determines that disclosure to Office of the General Counsel would interfere with an audit, investigation, or prosecution.

Sec. 5. *Functions and responsibilities*—.01 *Publication in the* **Federal Register** (5 U.S.C. 552(a)(1) of the Act).

a. The following information of the Department and its component organizations shall be separately stated and currently published in the **Federal Register** for the guidance of the public.

1. Descriptions of the central and field organizations and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may secure information, make submittals or request, or obtain decisions;

2. Statements of the general course and method by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

3. Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

4. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by their agencies; and

5. Each amendment, revision, or repeal of the foregoing.

b. The information contained in paragraph 5.01a of this subsection shall be published in the **Federal Register** in the form of or included in:

1. Department Organization Orders, including any supplements and appendices thereto. The Assistant Secretary for Administration shall cause such materials to be published in the **Federal Register**. The Department Organization Orders and their supplements and appendices contain, among other information, the descriptions of the various organizations, the descriptions of the various organizations of the Department, and in many instances the other information indicated in subparagraphs 5.01a.1 and 2. of this subsection.

2. Department Administrative Orders, including any supplements or appendices thereto.

3. Other Office of the Secretary or operating unit directives.

4. Rules and orders contained in the various Titles of the Code of Federal Regulations assigned to the Office of the Secretary and to the operating units of the Department.

5. General notices.

6. Other forms of publications when incorporated by reference in the Federal Register with the approval of the Director of the Federal Register.

c. Officials responsible for determning what materials are to be submitted for publication in the **Federal Register** pursuant to 5 U.S.C. 552(a)(1) shall consider, among other factors, in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) need not be published. However, it may be decided, in accord with subsection 3.02 of this order, that publication even of such matters should in some instances and respects be made.

2. That matters which are reasonably available to the class of persons affected thereby and which have been or are to be incorporated by reference in the **Federal Register** with the approval of the Director of the Federal Register are deemed to be published in the **Federal Register**. In such cases, the standards a.id procedures for incorporation by reference established by the Director of the Federal Register (See 1 CFR Part 51; 37 FR 23614, November 4, 1972) shall be followed.

3. That matters to which members of the public do not have to resort or by which they are not to be adversely affected, or which do not impose burdens, obligations, conditions, or limitations upon persons affected, need not be published in the **Federal Register** under 5 U.S.C. 552(a)(1). However, the policy considerations expressed in subsection 3.02 of this order may in certain instances suggest the publication of such matters.

4. That no person shall in any manner be required to resort to or be adversely affected by any matter required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) when it is not so published. However, actual and timely notice given to such a person having such actual notice is equally bound as one having constructive notice by **Federal Register** publication. Nevertheless, such actual notice should as a matter of policy be in addition to, rather than instead of, publication.

5. That "currently publish" as provided in 5 U.S.C. 552(a)(1) means promptly at the time that the action occurs.

.02 Availability of materials for inspection and copying; indexing (5 U.S.C. 552(a)(2) and (5) of the Act).

a. The head of each operating unit of the Department shall for his unit, and the Assistant Secretary for Administration shall for the officials, officers and units referred to in paragraph 4.01a. of this order, in accordance with rules which they shall cause to be published in the **Federal Register**, make available for public inspection and copying the following materials, unless such materials are promptly published and copies offered for sale:

1. Final opinion (including concurring and dissenting opinions), as well as orders, made in the adjudication of cases.

2.. Those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**.

3. Administrative staff manuals and instructions to staff that affect a member of the public.

4. Where applicable, a record of the final votes of each member of an agency in every proceeding when the agency has more than one number. (The terms "agency proceeding" and "agency" are defined in 5 U.S.C. 551, as amended by 5 U.S.C. 552(e).

5. An index, currently maintained, which provides identifying information for the public as to any matter (a) which has been issued, adopted, or promulgated since July 4, 1967, and (b) which is required to be made available or published pursuant to 5 U.S.C. 552(a)(2). It is hereby determined, subject to subsequent redetermination by the Assistant Secretary for Administration pursuant to changed circumstances, that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each such index and supplements thereto. Copies of such indexes shall be provided upon request at a cost not to exceed the direct cost of duplication.

b. The rules published in the **Federal Register** under paragraph 5.02a of this subsection shall include provisions for the time, place, copying fees, and any procedures applicable to making such materials available at facilities or otherwise for public inspection and copying.

c. The Assistant Secretary for Administration shall establish and maintain a centralized public reference facility for the inspection and copying of materials subject to 5 U.S.C. 552(a)(2) and (5). The head of an operating unit may, with the approval of the Assistant Secretary for Administration, establish for this organization a separate place for making the materials subject to 5 U.S.C. 552(a)(2) and (5) available to the public for inspection and copying, and publish appropriate rules applicable thereto approved by the Assistant Secretary for Administration.

d. The officials responsible for determining the materials to be available for public inspection and copying under paragraph 5.02a of this subsection shall consider, among other factors, in promulgating the published rules or in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C 552(b) are not required to be made available. Nonetheless, they may be made available in any particular respect if it is determined that this would better serve the public interest.

2. That they may, to the extent required to prevent a clearly unwarranted invasion of personal privacy, delete identifying details from an opinion, statement of policy, interpretation, staff manual or instruction, or other materials, when it is made available or published. However, in each case the justification for the deletion shall be explained fully in writing. Such action is to be taken in order to provide the public with those information materials called for under 5 U.S.C. 552(a)(2), while at the same time protecting the medical, family or other personal privacy rights of the individuals involved in such agency materials. Agency explanations for deletions of identifying details should provide such information as can be furnished without defeating the purpose of the deletion provision. When an agency has a number of recurring deletion situations, it may in its implementing rules or other public notice specify the applicable reasons for such deletions, and cite the rule in the preamble to each of the covered documents, rather than contain the complete explanation in each document.

3. That distinction should be made between those materials (a) which do and which do not affect any member of the public, and (b) which are and which are not to be relied upon, used or cited as precedent by the agency against any private person or party. Those materials specified in 5 U.S.C. 552(a)(2) which affect the public and which have precedential effect shall be made available for inspection and copying, and also included in the index, as provided in this order. However, since the basic purpose of this section of the Act is to disclose to the interested members of the public essential information which will enable them to deal effectively and knowingly with an agency, materials which provide such information should be included in the appropriate facilities.

4. That an advisory interpretation made by an agency on a specific set of facts which is requested by and addressed to a particular person need not be made generally available under paragraph 5.02a. of this subsection if it is not to be cited or relied upon by any official of the agency as a precedent in the disposition of other cases. Nonetheless, if it may serve any useful public purpose, any such interpretation may be made publicly available upon the deletion of identifying details to the extent necessary to protect personal privacy.

5. That the agency is not precluded using as precedent against any affected person those matters specified in subparagraphs 1.3. of paragraph 5.02a of this subsection as to which a person has actual and timely notice of the terms thereof, even though they have not been indexed and either made available or published. If the agency practice is to furnish such notices, it is more desirable that it do so in addition to, rather than instead of, indexing and making them publicly available hereunder, in recognition of the purpose of 5 U.S.C. 552(a)(2) to make the end product materials of the administrative process available to the public.

6. That matters which are published in the **Federal Register** in accordance with 5 U.S.C. 552(a)(1) are not required to be made available under 5 U.S.C. 552(a)(2) for public inspection and copying nor need they be indexed (the Federal Register has its own index). However, to the extent that it would be useful and practicable to index and provide such published information to the public for ready reference, it should be included.

7. That an index provides sufficient identifying information for the public if a person who exercises diligence may familiarize himself with the materials through use of the index.

8. That an alternative to making materials available to the public for inspection and copying is to promptly publish and offer them for sale to the public. Such published materials, however, are subject to the indexing requirement. If it would help the public and it is practical to do so, a copy of such published materials should also be made available in any facilities established for public inspection, and if permissible, copies of the publications should be made available for sale therein.

9. That materials required to be made available or published under 5 U.S.C. 552(a)(2), but which were adopted or issued by an agency prior to July 4, 1967, may at any time be used, relied upon or cited as precedent by the agency irrespective of whether they are listed in the agency's index. Officials, however, may, to the extent they deem it practicable and helpful to the public, also index such materials in whole or in part.

03. *Availability of records upon request* (5 U.S.C. 552(a) (3), (4), and (6) of the Act).

a. The Assistant Secretary for Administration shall cause to be published in the **Federal Register** rules stating the time, place, fees and procedures to be followed, with respect to making records of the Department promptly available to any person requesting them, as provided in 5 U.S.C. 552(a) (3), (4) and (6).

b. The rules published in the Federal Register pursuant to paragraph 5.03a. of this subsection shall, insofar as is practicable, be complete, precise, and workable, suitable for the information of agency personnel and the public alike, and shall include provisions, among other matters, for the following:

1. Information as to the place to make requests, when requests will be deemed received by the Department for purposes of the time limits contained in 5 U.S.C. 552(a)(6), the timely handling of requests, and the making of initial determinations concerning the availability of the records requested.

2. Timely notice to the requester, as applicable, that a requested record does not exist, has been disposed of as provided by law, or is not in the possession or control of the Department.

3. A procedure whereby the time limits for responding to requests for records or appeals from denials may be extended, as authorized by 5 U.S.C. 552(a)(6)(B), and wherein a failure of the agency to respond in a timely manner may be considered a denial of the request.

4. Consultation with other operating units or offices within the Department, or with other Federal executive agencies, when there is a mutual agency interest or concern in the record or its contents and there is a question as to its availability. The determination as to availability should be made by the predominantly interested agency, if there is one. When a record requested from the Department is the exclusive concern of another executive agency, the request shall be promptly referred to that other agency, and the requester so notified.

5. A procedure for administrative appeal of a request for a record initially denied in whole or in part. The appeal procedure shall include provisions which insure that: (i) The requester may file an appeal, in writing, within thirty days of receipt of an initial denial; (ii) an appeal shall be considered received when properly addressed to the General Counsel; (iii) appeals shall be decided without right of the requester for a personal appearance, oral argument, or hearing; (iv) timely decisions on appeals or other notices concerning them shall be made in writing, and communicated to the requester; (v) if the decision is wholly or partly in favor of the requester, the General Counsel shall make the particular records of information available to the requester or order that such be done; and to the extent that the decision is adverse to the requester, it shall briefly state the reason for the decision and the identity of the official responsible for making it, (vi) whenever applicable, requesters shall be effectively notified of their right to seek judicial review.

6. A schedule of fees as authorized by the Act, with procedures which (i) put requesters of records on timely notice as to substantial search and copying fees estimated to be incurred with respect to a request; (ii) attempt to insure that requester pay the chargeable fees for work to be done; (iii) which provide for appropriate waiver or reduction of fees; and (iv) which do not intend to discourage requests for records under the Act. Work, services, publications, or documents which the agency as part of its regular mission has been performing or producing or will be performed or produced for members of the public or for those who are engaged in the transaction of official business of or with the Government, without charge, by user charge, or by publication or subscription charge, are to be distinguished from those records properly requested under 5 U.S.C. 552(a)(3) and the fees charged thereunder.

c. The officials designated in subsections 4.01 and 4.02 of this order who are responsible for initially determining whether any records properly requested under the Act may be made available, shall include in their consideration:

1. Whether the records are of the type referred to in subsection 3.01 of this order, and the request is to be handled in accord with the policy set forth therein;

2. Whether the records are subject to 5 U.S.C. 552(a) (1), (2), or (5) and have been otherwise made publicly available pursuant to paragraphs 5.01a or 5.02a of this section;

3. Whether the requester has complied with the published rules covering the making of requests and the payment of fees;

4. Whether the records or information contained in them are matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b), and if so whether they are not to be disclosed or whether, if such discretion exists, it would nevertheless be in the public interest to make the record or information available in whole or in part;

5. Whether any reasonably segregable portion of the record can be disclosed after deletion of the portions which it is determined should not be disclosed.

d. The officials who establish a facility as provided in paragraph 5.02 of this section may utilize the facility to:

1. Receive and assist in processing requests for records;

2. Receive from officials the requested records which are made available, maintain custody of them and supervise their inspection and copying by requesters;

3. Arrange for making certified and other copies of available records;

4. Collect and account for fees established for services connected with the requests;

5. Return records after inspection to their place of custody;

6. Act as a central communication center between the requesters and the organizations involved in recordkeeping and officials making determinations as to their availability; and

7. Provide reasonable assistance to persons requesting records, including explanations of the applicable procedure and other rules, and making referrals to sources of information available under regular informational programs of the Department.

e. The Assistant Secretary for Administration shall establish such standard forms, procedures and instructions as he deems necessary for processing requests for records, maintaining records of related expenditures, and obtaining information for the Departmental report required by 5 U.S.C. 552(d).

04. *Special review requirements.*—a. The General Counsel or one of his designees shall be consulted before any initial denial is issued.

b. As provided in paragraph 7.03c. of DAO 205–12, the Operating Unit Public Affairs Office shall receive a copy of each request at the same time as the Action Office. If the Public Affairs Officer wishes to monitor and/or comment on any response to a particular request prior to transmittal, the Officer shall notify the Action Office within three (3) working days after receiving a copy of the request. The Action Office shall cooperate with the Public Affairs Officer in this effort; and give due consideration to any recommendations or comments from the Officer. In addition, the Director of the Office of Public Affairs or his or her designee shall be informed before any decision on an appeal from an initial denial is issued.

c. As provided in Part B, Chaper IV, subsection 5.06f. of the Department's Handbook of Security Regulations and Procedures, appeals of initial denials based, even in part, on the ground that the matter is exempted from disclosure under 5 U.S.C. 552(b)(1) (classified information) shall be referred to the Departmental Information Security Program Committee. That Committee shall conduct a declassification review and determine if the record(s) involved may be made available to the public.

d. Whenever, on appeal from an initially denied request, the General Counsel and the concerned Secretarial Officer or operating unit head cannot agree on whether applicable exemptions should be waived, as provided in subsection 03c.4. of this section, the matter shall be promptly referred to the Secretary for resolution.

.05 *Annual Report* (5 U.S.C. 552(d) of the Act).

a. The Assistant Secretary for Administration shall prepare and transmit to the Congress on or before March 1 of each year the annual report by the Act.

b. To assist in the preparation of the report, each official specified in subsection 4.01 of this order, shall, no later than January 31 of each year, provide the Assistant Secretary for Administration with the information specified in the Act and such other information as he may require.

Sec. 6. *Supplementary rules.* 01 The Secretary may from time to time issue such supplementary rules or instructions as he deems appropriate to carry out the purposes of this order.

.02 Each duly authorized official may issue rules covering his respective area of responsibility designed to implement this order, and which are consistent herewith and with any rules issued by the Assistant Secretary for Administration.

Sec. 7. *Effect on other orders.* This order supersedes Department Administrative Order 205–12 of June 29, 1967, as amended. Any other prior orders, rules, or instructions, or parts thereof, the provisions of which are inconsistent or in conflict with the provisions of this order, are hereby constructively amended or superseded.

Appendix B—Freedom of Information Public Facilities and Addresses for Requests for Records

The following public reference facilities have been established within the Department of Commerce (a) of the public inspection and copying of materials of particular units of the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C. 552(a)(3); (b) for furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) as addresses, in some instances, for the receipt and processing of requests for records under 5 U.S.C. 552(a)(3). Units having separate mailing addresses are noted below. Requests should be addressed to the unit which the requestor knows or has reason to believe has possession or control or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, Room 6628, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377–3212. This facility serves the Office of the Secretary and all other units of the Deparment not identified below as explained at 15 CFR 4.4 (c) and (d).

Bureau of the Census, Freedom of Information Request Control Desk, Room 2428, Federal Building 3, Washington, DC 20233. Phone (301) 763–5262.

The Bureau of the Census maintains a separate facility for inspection of (a)(2) records. The location is Room 2455, Federal Building 3, Washington, DC 20233.

Bureau of Economic Analysis, Public Reference Facility, Room 1115, Tower Building, 1401 K Street NW., Washington, DC. Mailing address: Freedom of Information Control Desk, Office of Administration, Office of Economic Affairs, Room 4079 Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone 377–5161.

Economic Development Administration, Freedom of Information Records Inspection Facility, Room 7001, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue NW., Washington, DC 20230. Phone (202) 377–4687. Mailing address of Regional EDA offices:

Philadelphia Regional Office, EDA U.S. Department of Commerce, Freedom of Information Request Control Desk, Liberty Square Building first floor, 105 South 7th Street, Philadelphia Pennsylvania 19106.

Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 750, 1365 Peachtree Street NE., Atlanta, Georgia 30309.

Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 200, 333 West Colfax, Denver, Colorado 80204.

Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, Suite A–1630, Chicago, Illinois 60604.

Seattle Regional Office, EDA, U.S.C. Department of Commerce, Freedom of Information Request Control Desk, Jackson Federal Building, Room 1856 915 Second Avenue Seattle, Washington 98174.

Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Grant Building, Suite 201, 611 East 6th Street, Austin, TX 78701.

Export Administration, Freedom of Information Records Inspection Facility, Room 3869, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue NW., Washington, DC 20230. Phone (202) 377–2593.

The Export Administration maintains a separate facility for public inspection of (a)(2) records. The location is Room 4886, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue NW., Washington, DC 20230.

International Trade Administration, Freedom of Information Records Inspection Facility, Room 4102, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue NW., Washington, DC 20230. Phone (202) 377–3031.

Minority Business Development Agency, Freedom of Information Office. Room 6723, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue NW., Washington, DC 20230. Phone (202) 377–8015.

The Minority Business Development Agency maintains a separate facility for public inspection of (a)(2) records. The location is Room 5078B, Herbert C. Hoover Building, Washington, DC 20230.

National Bureau of Standards, Freedom of Information Records Inspection Facility, Room E106, Administration Building Gaithersburg, Maryland. Phone (301) 921–3444. Mailing address: National Bureau of Standards, Freedom of Information Request Control Desk, Room A1105, U.S. Department of Commerce, Washington, DC 20234 (Gaithersburg, Maryland).

The National Bureau of Standards maintains a separate facility for public inspection of (a)(2) records. The location is Room E–106 Administration Building, Gaithersburg, Maryland 20899.

National Oceanic and Atmospheric Administration, Public Reference Facility, Room 716 WSC–5, Rockville, MD. 20852. Phone (301) 443–8967.

National Technical Information Service, Freedom of Information Records Inspection Facility, 5285 Port Royal Road, Springfield, Virginia 22161. Phone (703) 487–4670.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, Room 4717, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue NW., Washington, DC 20504. Phone (202) 377–1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Room 5C15, Crystal Plaza 2, Arlington, Virginia. Phone (703) 557–4035. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 8, Washington, DC 20231.

United States Travel and Tourism Administration, Freedom of Information Request Control Desk, Room 1524, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue NW., Washington, DC 20230. Phone (202) 377–3811.

Appendix C—Officials Authorized to Make Initial Denials or Requests for Records

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations. Accordingly, the Director, Office of Management and Organization, is specifically authorized to amend or revise this Appendix from time to time in order to reflect such changes).

Office for the Secretary:

Office of the Deputy Secretary:
  Associate Deputy Secretary
Office of Business Liaison:
  Director
Office of Consumer Affairs:
  Director
Office of the Assistant Secretary for Congressional and Intergovernmental Affairs:
  Deputy Assistant Secretary for Congressional Affairs
Office of the Inspector General:
  Counsel to the Inspector General
  Deputy Counsel to the Inspector General
Office of the General Counsel:
  Deputy General Counsel
  Assistant General Counsel for Administration
  Director, Office of Intelligence Liaison
Office of the Under Secretary for Economic Affairs:
  Administrative Officer

Office of the Assistant Secretary for Administration:

Office of the Administrative Law Judge:
  Office Manager
Office of Finance and Federal Assistance:
  Director
Office of, Federal Assistance
  Director
Office of, Financial Management
  Office of Management and Organization:
  Chief, Management Support Division
  Director
Office of the Director for Planning, Budget and Evaluation:
  Director
Office of Budget:
  Director
Office of Program Planning and Evaluation:
  Director
Office of the Director for Personnel and Civil Rights:

Director
Office of Personnel:
Director
Office of Personnel Operations:
Director
Office of Civil Rights:
Director
Office of the Director for Management and Information Systems:
Director
Office of the Director for Procurement and Administration Services:
Director
Office of Procurement Management:
Director
Office of Procurement Operations:
Director
Office of Administration Services Operations:
Director
Office of Real Property Programs:
Director
Office of Security:
Director
Office of Small and Disadvantaged Business Utilization:

Bureau of the Census:

Associate Director for Management Services

Bureau of Economic Analysis:

Director

Economic Development Administration:

Chief Counsel
Assistant Chief Counsel
Regional Counsels

Export Administration:

Under Secretary
Deputy Under Secretary
Assistant Secretary for Export Administration
Director, Office of Technology and Policy Analysis
Director, Office of Foreign Availability
Director, Office of Export Licensing
Director, Secretary for Export Enforcement
Director, Office of Export Enforcement
Director, Office of Antiboycott Compliance
Director, Office of Export Intelligence

International Trade Administration:

International Economic Policy:
Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Office of Africa
Director, Office of the Near East
Director, Office of South Asia
Director, Office of Western Europe
Director, Office of European Community Affairs
Director, Office of Eastern Europe and Soviet Affairs
Director, Office of South America
Director, Office of Mexico and the Caribbean Basin
Director, Office of Canada
Director, Office of the PRC and Hong Kong
Director, Office of the Pacific Basin
Director, Office of Japan

Trade Development:

Director, Office of World Fairs and International Expositions
Director, Office of Planning and Coordination
Director, Office of Computers and Business Equipment
Director, Office of Microelectronics and Instrumentation
Director, Office of Telecommunications
Director, Office of General Industrial Machinery
Director, Office of Special Industrial Machinery
Director, Office of International Major Projects
Director, Office of Trade and Investment Analysis
Director, Office of Industry Assessment
Director, Office of Trade Finance
Director, Office of Program and Resources Management
Director, Office of Service Industries
Director, Office of Export Trading Company Affairs
Director, Office of Forest Products and Domestic Construction
Director, Office of Metals, Minerals and Commodities
Director, Office of Energy
Director, Office of Chemicals and Allied Products
Director, Office of Automotive Industry Affairs
Director, Office of Consumer Goods
Director, Office of Textiles and Apparel
Director, Assistant Secretary for Trade Adjustment Assistance
Director, Office of Aerospace Market Development
Director, Office of Aerospace Policy and Analysis

Import Administration:

Director, Office of Industrial Resources Administration
Director, Foreign Trade Zone Staff
Director, Statutory Import Programs Staff
Director, Office of Compliance
Director, Office of Investigations
Director, Office of Policy
Director, Office of Agreements Compliance

U.S. and Foreign Commercial Service:

Director, Caribbean Basin Information Center
Director, Office of Foreign Service Personnel
Deputy Assistant Secretary for Foreign Operations
Director, Office of Planning and Management
Director, Office of Commercial Information Management
Director, Office of Trade Promotion
Manager of Export Promotion Services
Deputy Assistant Secretary for Domestic Operations

Administration:

Director, Office of Organization and Management Support
Director, Office of Personnel
Director, Office of Financial Management
Director, Office of Information Resources Management
Director, Office of Public Affairs
Director, Congressional Affairs Staff

Minority Business Development Agency:

Assistant Director for Operations.

National Bureau of Standards:

Deputy Director of Administration

National Oceanic and Atmospheric Administration:

Under Secretary
Assistant Secretary
Director, Office of Public Affairs
Director, NOAA Corps
General Counsel
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Service
Assistant Administrator for Environmental Satellite, Data, and Information Service
Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Administration
Director, National Capital Administrative Support Center
Director, Eastern Administrative Support Center
Director, Central Administrative Support Center
Director, Western Administrative Support Center
Director, Mountain Administrative Support Center

National Technical Information Service:

Director
Associate Director for Administration
Director, Office of Administrative Management
Manager, Management Analysis Division

National Telecommunications and Information Administration:

Deputy Assistant Secretary
Chief Counsel
Legal Advisor

Patent and Trademark Office:

Solicitor
Deputy Solicitor

United States Travel and Tourism Administration:

Under Secretary
Director, Office of Management and Administration

Alan P. Balutis,

Director for Management and Budget.

Date: December 7, 1987.

[FR Doc. 88-3797 Filed 3-3-88; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 33 and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date will be May 3, 1988. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used.

EFFECTIVE DATE: Effective March 4, 1988, the new closing date for D&C Red No. 33 and D&C Red No. 36 will be May 3, 1988.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of March 4, 1988, for the provisional listing of D&C Red No. 33 and D&C Red No. 36 by regulation published in the **Federal Register** of January 4, 1988 (53 FR 19). FDA extended the closing date for these color additives until March 4, 1988, to provide time for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives, and for publication of a regulation in the **Federal Register** regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the March 4, 1988, closing date for the provisional listing of these color additives until May 3, 1988.

FDA has nearly completed its review and evaluation of available information relevant to the use of these color additives in drugs and cosmetics. The agency has concluded that drug and cosmetic uses of D&C Red No. 33 and D&C Red No. 36 are safe. Thus, the agency has decided to permanently list the color additives for these uses. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA, believes that it is reasonable to postpone the closing date for these color additives until May 3, 1988, to provide time for the preparation and publication of appropriate **Federal Register** documents. The agency intends to publish these documents as soon as possible. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

The extension of time will also be used to consider what effect, if any, the recent decision in *Public Citizen* v. *Young* (D.C. Cir. No. 86–1548, October 23, 1987), has on this proceeding.

Because of the shortness of time until the March 4, 1988, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of March 4, 1988. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d)(1) and (3), this postponement is issued as a final regulation, effective on March 4, 1988.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" appearing in the table in paragraph (b) to read "May 3, 1988."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in the table, appearing in the introductory text in paragraph (d) to read "May 3, 1988."

Dated: February 24, 1988.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-4646 Filed 3-3-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-88-02]

Drawbridge Operation Regulations; Potomac River, District of Columbia/ Prince Georges County, MD/ Alexandria, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of Cianbro Corporation, contractor for the D.C. Department of Public Works, the Coast Guard is issuing a temporary rule amending the regulations that govern the operation of the drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland. This rule is being issued to limit the number of bridge openings during daytime hours when renovation work on the drawspan will be taking place. This action still provides for the reasonable needs of navigation.

Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be amended based on the comments received.

DATES: This temporary rule is effective from February 29, 1988, until November 30, 1988, unless amended or terminated before that date.

Comments on the temporary rule must be received on or before April 1, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine whether the temporary rule should be amended in light of comments received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Temporary Rule

At the request of Cianbro Corporation, contractors for the D.C. Department of Public Works, the Coast Guard is issuing a temporary rule amending the regulations governing the operation of the drawbridge across the Potomac River, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland. The contractor has requested that one hour advance notice be given by vessels for bridge openings between 9:00 a.m. and 4:00 p.m., Monday through Friday during the renovation of the Woodrow Wilson Bridge, which is scheduled to begin at the end of February and be completed by the end of November. (The regulations currently in effect, 33 CFR 117.255 require the bridge to open on signal from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal Holidays.) The restricted openings are required to enable the contractor to proceed with the work. The one hour notice requirement is based on the contractor's belief that it will take slightly under one hour to clear the construction equipment from the bridge to permit an opening. Further restrictions on openings should not be necessary because of the infrequent need to open the bridge.

The Woodrow Wilson Bridge, a part of I-95, is an important link in the Interstate Highway System. It is on the primary route for vehicle traffic between the Northeastern and Southeastern sections of the nation. It is also a major commuter artery for commuters traveling between Maryland, Virginia, and the District of Columbia. The bridge is heavily traveled throughout the day and night, with the heaviest use during the morning and evening rush hours. Because of the heavy vehicle use, it is critical for the repair work to be completed in the most expeditious manner possible.

While the bridge opens for some large commercial and military vessels, their passage is relatively infrequent. They should not be inconvenienced by the requirement to give one hour advance notice. The only regular commercial waterway user on the Potomac River that requires the opening of the Woodrow Wilson Bridge has been contacted regarding the request and had no objections to the one hour advance notice requirement between 9 a.m. and 4 p.m.

The other waterway users who require the draw to open are sailboats being used for recreational purposes. While the operators of these vessels may be inconvenienced, their use of the Potomac River is not being unreasonably restricted by these temporary regulations.

I therefore find that good cause exist for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days. In particular, I find that further notice and public proceedings are contrary to the public interest.

Economic Assessment and Certification

This temporary rule is considered to be non-major under the Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the temporary regulation will provide bridge openings with a one hour advance notice allowing a smooth transition for both highway and waterway traffic.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, it will not have a significant economic impact of a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1-46:33; CFR 1.05-1(g).

2. Section 117.255(a) introductory text, (1), and (2) are revised to read as follows:

§ 117.255 Potomac River.

(a) The draw of the Woodrow Wilson Memorial (I-95) bridge, mile 103.8, between Alexandria, Virginia, and Oxon Hill, Maryland, shall open on signal, except on Mondays through Fridays, other than Federal holidays, the draw need not open for the passage of vessels:

(1) From 6:30 a.m. to 9:00 a.m. and 4:00 p.m. to 6:30 p.m., or

(2) From 9:00 a.m. to 4:00 p.m., unless at least one hour advance notice is given for an opening.

* * * * *

3. This temporary regulation is effective from February 29, 1988 until November 30, 1988, unless amended or terminated before that date.

Dated: February 17, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-4675 Filed 3-3-88; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Postage Deficiency; Mail Bearing Permit Imprints and Second-Class Mail

AGENCY: Postal Service.

ACTION: Final rule; delay of effective dates.

SUMMARY: On January 5, 1988, the Postal Service published in the **Federal Register** (53 FR 124-126) two similar final rules which provided that, after a final agency decision has been made regarding a postage deficiency (1) on a mailing of a second-class publication of (2) for a permit imprint mailing, the Postal Service would apply subsequent postage deposits to the postage deficiency. Postage on subsequent mailings bearing permit imprints and on second-class mailings would not be applied to the mailings, and those mailings would not be accepted as fully prepaid, until both the postage deficiency and the postage for the mailings had been paid in full. The effective date for implementation of these final rules was March 20, 1988. The Postal Service is hereby delaying for an indefinite period, or until further notice, the effective date of these rules because some possible problems with the rules have been identified which we are working to resolve.

DATES: This document is effective March 4, 1988. The January 5, 1988, final rules are delayed indefinitely or until further notice.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268-5321.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-4730 Filed 3-3-88; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 946

Disposition of Property Acquired by the Postal Inspection Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises existing procedures for the disposition of: (a) Property stolen from the mails and recovered by Postal Inspectors and (b) property obtained by the Postal Inspection Service for use as evidence, after the need to retain such property no longer exists. A claims procedure is established whereby such property, except contraband, is returned to its owner. Apparent owners are notified of their right to claim such property and, where no apparent owner is known and the value of the property in question exceeds $200, notice is published inviting the owner to submit a claim for its return.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Postal Inspector P.M. Renzulli, (202) 268–5476.

SUPPLEMENTARY INFORMATION: On January 27, 1988, the Postal Service published for comment in the **Federal Register** (53 FR 2236) a proposal to revise procedures for the disposition of property acquired by the Postal Inspection Service in the course of conducting official investigations. Interested persons were invited to submit comments on the proposal by February 26, 1988.

One comment was received favoring the proposal. In view of this response, the Postal Service hereby adopts the proposal without change.

Accordingly, the Postal Service revises 39 CFR Part 946 to read as follows:

List of Subjects in 39 CFR Part 946

Administrative Practice and Procedure, Claims, Currency, Law Enforcement, Postal Service.

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

Sec.

946.1 Scope of part.
946.2 Disposition of property of apparent owners.
946.3 Contraband and property subject to court order.
946.4 Disposition of property of unknown owners.
946.5 Disposition of property having a value of less than $200.
946.6 Disposition of abandoned property; additional period for filing claims.
946.7 Submission of claims.
946.8 Determination of claims.
946.9 Reconsideration of claims.
946.10 Record retention.
946.11 Proceeds of sale.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401(2), (5), (8), 404(a)(7), 2003, 3001

§ 946.1 Scope of part.

This part prescribes procedures governing the disposition of recovered stolen mail matter and any other property (real, personal, tangible or intangible) obtained by the Postal Inspection Service for possible use as evidence after the need to retain such property no longer exists. Property obtained by Postal Inspectors which appears to have been loose in the mails but is not retained for use as evidence, except unlawful matter, must be treated in accordance with postal regulations concerning disposition of dead mail (see Domestic Manual (DMM) 159.4). Unlawful matter must be disposed of in accordance with § 946.3.

§ 946.2 Disposition of property of apparent owners.

Where an apparent owner of property subject to this part is known, the Chief Postal Inspector or delegate will mail, by certified mail to the apparent owner's last known address, written notice describing the property and the procedure for filing a claim for its return (see §§ 946.3 and 946.7). Such claims must be filed within 30 days from the date the notice is postmarked. If the apparent owner of the property fails to file a timely claim, the property is considered abandoned and must be disposed of as provided in § 946.6.

§ 946.3 Contraband and property subject to court order.

Claims submitted with respect to property subject to this part, possession of which is unlawful, must be denied, in writing, by certified mail and the person submitting the claim must be accorded 45 days from the postmarked date to institute judicial proceedings to challenge the denial. If judicial proceedings are not instituted within 45 days, or any extension of time for good cause shown, the contraband property must be destroyed unless the Chief Postal Inspector or delegate determines that it should be placed in official use by the Postal Inspection Service. Property subject to this part, the disposition of which is involved in litigation or is subject to an order of court, must be disposed of as determined by the court.

§ 946.4 Disposition of property of unknown owners.

(a) Where no apparent owner of property subject to this part is known, except property described in § 946.3, and the Chief Postal Inspector or delegate estimates that the fair market value of the property exceeds $200, and the property is not needed as evidence, the Chief Postal Inspector or delegate must publish notice providing the following information:

(1) A description of the property including model or serial numbers, if known;

(2) The name, address, and telephone number of the Postal Inspector in Charge who has custody of the property; and

(3) A statement inviting any person who believes that he or she is fully entitled to the property to submit a claim for its return with the Postal Inspector in Charge who is identified in the notice. Such claim must be submitted within 30 days from the date of first publication of the notice (See § 946.7).

(b) The notice under § 946.4(a) must be published once a week for three consecutive weeks in a publication of general circulation within the judicial district where the Postal Inspection Service took possession of the property.

§ 946.5 Disposition of property having a value of less than $200.

Where the owner of property subject to this part is unknown and the Chief Postal Inspector or delegate estimates that fair market value of such property is $200 or less, title to the property vests in the United States Postal Service, subject to the right of the owner to submit a valid claim as provided in § 946.6.

§ 946.6 Disposition of abandoned property; additional period for filing claims.

(a) Upon expiration of the time provided in §§ 946.2 and 946.4(a)(3) for the filing of claims or any extension thereof, and without the receipt of a timely claim, the property described in the notice is considered abandoned and becomes the property of the United States Postal Service. However, if the owner satisfies the requirements of § 946.6(b), except for property described in § 946.3, such abandoned property must be returned to the owner if a valid claim is filed within 3 years from the date the property became abandoned, with the following qualifications:

(1) Where property has been placed in official use by the Postal Inspection Service, a person submitting a valid claim under this section must be reimbursed the fair market value of the

property at the time title vested in the United States Postal Service, less costs incurred by the Postal Service in returning or attempting to return such property to the owner and;

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the amount of proceeds realized from the sale of such property less costs incurred by the Postal Service in selling the property and in returning or attempting to return such property to the owner.

(b) In order to present a valid claim under § 946.6(a), the claimant must establish that he or she had no actual or constructive notice prior to the date the property became abandoned that he or she was entitled to file a claim pursuant to § 946.2 or § 946.4. Publication of notice pursuant to § 946.4 provides constructive notice unless a claimant can demonstrate circumstances which reasonably precluded his access to the published notice.

§ 946.7 Submission of claims.

Claims submitted pursuant to this part must be submitted on Postal Service Form 1503 which may be obtained from the Inspector in Charge who has custody of the property.

§ 946.8 Determination of claims.

Upon receipt of a claim under this part, the Postal Inspection Service must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the Chief Postal Inspector or delegate who must approve or deny the claim by written decision, a copy of which must be forwarded to the claimant by certified mail. If the claim is approved, the procedures to be followd by the claimant to obtain return of the property, or its determined value, must be stated. If the claim is denied, the decision must state the reasons therefor.

§ 946.9 Reconsideration of claims.

A written request for reconsideration of denied claims may be submitted within 10 days of the postmarked date of the mailing denying the claim. Such requests must be addressed to the Chief Postal Inspector or delegate and must be based on evidence recently developed or not previously presented.

§ 946.10 Record retention.

Records regarding property subject to this part will be retained for a period of 3 years following return of the property to its owner or a determination that the property is abandoned.

§ 946.11 Proceeds of sale.

Proceeds from the sale of property subject to this part must be deposited in the fund established by 39 U.S.C. 2003 as miscellaneous receipts.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-4731 Filed 3-3-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3332-6]

Ocean Dumping; Final Site Designation

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

ACTION: Final rule.

SUMMARY: EPA today designates four sites in the Gulf of Mexico as EPA-approved ocean dumping sites for the dumping of dredged material. These sites are located one each offshore Pensacola, Florida and Mobile, Alabama and two offshore Gulfport, Mississippi. This action is to designate acceptable ocean dumping sites for the current and future disposal of certain kinds of dredged material. EPA published its Proposed Rule designating these sites for dumping of dredged material at 52 FR 29550 (August 10, 1987).

DATE: This designation shall become effective on April 4, 1988.

ADDRESSES: Send comments to:

Sally Turner, Chief, Marine Protection Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365.

The file supporting these site designations is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC 20460

EPA, Region IV, 345 Courtland Street NE., Atlanta, GA 30365

FOR FURTHER INFORMATION CONTACT: Reginald Rogers, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted, i.e., an Ocean Dredged Material Disposal Site (ODMDS). On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the EPA Region in which the site is located. These proposed site designations are within Region IV and are being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*), and was extended on August 19, 1985 (50 FR 33338). That list established the existing sites at Pensacola, Mobile, and Gulfport as interim sites and extended their periods of use until December 31, 1988.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as these (see 39 FR 16186 [May 7, 1984]).

EPA has prepared a Draft EIS (DEIS) and Final EIS (FEIS) entitled, "Environmental Impact Statement (EIS) for Pensacola, FL, Mobile, AL, and Gulfport, MS Ocean Dredged Material Disposal Site Designation." The action discussed in the EIS is the final designation for continuing use of ocean dredged material disposal sites near Pensacola, Florida; Mobile, Alabama; and Gulfport, Mississippi.

The EIS discusses the need for the designation and examines ocean disposal site alternatives to this action. The EIS evaluates near-shore, mid-shelf and shelf-break alternative sites using the general criteria and specific factors contained in the Ocean Dumping Regulations. The EIS presents information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies.

On Friday, February 13, 1987, a Notice of Availability of the FEIS for public review and comment was published in the **Federal Register** (52 FR 4658 [February 13, 1987]). Four responses were received from EPA's request for comments and were addressed in the Proposed Rule published for this site designation.

C. Site Designation

The Pensacola site is located approximately 1.5 nautical miles (nmi) from Perdido Key and occupies an area of about 2.48 nmi ². Water depths within the area average 11 meters (m). The coordinates of the site are as follows:

30°17'24' N., 87°18'30" W.
30°17'00" N., 87°19'50" W.
30°15'36" N., 87°17'48" W.
30°15'15" N., 87°19'18" W.

The site will be designated for the disposal of predominantly sandsized dredged material only.

The proposed Mobile site is located approximately 4.2 nmi from Mobile Point and occupies an area of approximately 4.8 nmi ². Water depths in the area average 14 m. The coordinates of the site are as follows:

30°10'00" N., 88°07'42" W.
30°10'24" N., 88°05'12" W.
30°09'24" N., 88°04'42" W.
30°08'30" N., 88°05'12" W.
30°08'30" N., 88°08'12" W.

The two proposed Gulfport sites lie one to the east and one to the west of Ship Island Bar Channel. The eastern site is approximately 1.2 nmi from Ship Island containing an area of approximately 2.47 nmi ² in depths averaging 9.1 m. The western site is approximately 0.7 nmi from Ship Island and contains an area of approximately 5.2 nmi ² in water depths averaging 8.2 m. The coordinates of the sites are as follows:

Eastern Site

30°11'10" N., 88°58'24" W.
30°11'12" N., 88°57'30" W.
30°07'36" N., 88°54'24" W.
30°07'24" N., 88°54'48" W.

Western Site

30°12'00" N., 89°00'30" W.
30°12'00" N., 88°59'30" W.
30°11'00" N., 89°00'00" W.
30°07'00" N., 88°56'30" W.
30°06'36" N., 88.57'00" W.
30°10'30" N., 89°00'36" W.

On August 10, 1987, EPA proposed a rule change designating these sites for the disposal of dredged materials (52 FR 29550, August 10, 1987). The preamble to this Proposed Rule presented the characteristics of the sites in terms of the eleven specific criteria identified in the Ocean Dumping Regulations which, taken together, constitute an assessment of the sites' suitability as repositories for dredged material. That assessment concludes that these sites are appropriate for final designation. The U.S. Fish and Wildlife Service has concurred with these site designations.

Two letters of comment were received on the proposed rule, both concerning the Pensacola, Florida ODMDS. The first letter was from the Honorable Bob Martinez, Governor of Florida; and the second was from the Honorable Lawton Chiles, United States Senator. Each of these two letters expressed concerns related to the location of the ODMDS within State of Florida territorial waters and partially within the Fort Pickens State Park and Aquatic Preserve; consideration of NEPA alternatives such as upland disposal (beach nourishment) as options to ocean dumping; the need for an easement to the ODMDS from the Florida Board of Trustees; the need for a site management plan for the ODMDS, and/or site consistency with the Florida Coastal Management Program (CMP). For the following reasons, EPA does not believe that these concerns warrant any change in its proposal to designate the Pensacola ODMDS.

Congress authorized EPA under section 102(c) of MPRSA to make site designations for dumping in ocean waters. Such site designations involve this Agency's application of regulatory site selection criteria (in 40 CFR Part 228) and, by Agency policy, preparation of an EIS evaluating each potential dumping site. A site designation does *not*, however, authorize any actual dumping at the site. In the case of dredged materials, MPRSA requires approval of each proposed dumping project by the Corps of Engineers, applying EPA's ocean dumping criteria (in 40 CFR Part 227). If disposal in State waters is proposed, the project is also subject to State water quality certification under Section 401 of the Clean Water Act (CWA). The State may, therefore, effectively veto any dumping which it determines to be inconsistent with maintaining State water quality standards for the proposed disposal site.

If, however, a project involving disposal of dredged materials within State territorial waters receives both Corps approval under MPRSA and State certification under the CWA, the disposal may proceed whether or not EPA has designated some site in the project area as an environmentally suitable place for dumping dredged materials. MPRSA provides that an EPA-designated site will be used only if "feasible." When no EPA-designated disposal site exists at a location which is reasonably accessible to a Corps/State-approved dredging project, MPRSA authorizes the Corps to specify a disposal area for that project. In summary, just as the presence of an EPA-designated site does not itself constitute authorization for any actual disposal project, the absence of an EPA-designated site in an area does not necessarily preclude disposal there once a project receives authorization from the Corps and CWA 401 certification from the State.

Because of the statutory preference for EPA-studied locations as dredged material disposal sites, this Agency believes that it should study and designate disposal sites in any area where the need for such sites may reasonably be anticipated. In the case of the site proposed for EPA designation offshore Pensacola, we believe it is certainly reasonable to suppose that there may be future need for a disposal site in the area of the Fort Pickens Aquatic Preserve. The Florida statute establishing such preserves expressly empowers the Florida Board of Trustees of the Internal Improvement Trust Fund to authorize maintenance dredging for existing navigation channels and dredging and spoiling in preserves for public navigation projects (Florida Statutes, section 258.42), and we are aware of such projects now being planned.

Governor Martinez correctly pointed out that the Pensacola ODMDS is partially located *within* the Fort Pickens Aquatic Preserve, contrary to incorrect statements made in both the EIS and the Proposed Rule indicating that this site is in the *vicinity* of the Preserve. However, portions of the area EPA is proposing to designate within the Fort Pickens Aquatic Preserve have repeatedly been used for disposal of dredged materials from public navigation projects in the past. For example, on March 28, 1985, the U.S. Navy received Corps approval to dump dredged materials within this Preserve, and the State of Florida certified that such dumping would be consistent with Florida's water quality standards for the Outstanding Florida Waters there. Disposal from that Navy project has since occurred without apparent significant adverse effects to the Preserve.

EPA considers the disposal location for dredged material from specific local projects as an issue separate from designation of an ODMDS and one that should be addressed in a project-specific NEPA document. Such a project evaluation document should consider the no action and several action alternatives. Where appropriate, these action alternatives could include upland disposal such as beach nourishment. The presence of an EPA-approved ODMDS will be useful in the event that ocean disposal of acceptable dredged materials is determined to be one of those action alternatives.

Regardless of EPA site designation, the State of Florida retains legal

authority to preclude any actual disposal in these or other State territorial waters by means of its power to deny water quality certification under CWA Section 401. In the case of the Pensacola site, we fully agree with the statement in Senator Chiles' letter that water quality considerations make it unsuitable for material containing more than 10% fines, and the proposed EPA designation would specifically limit any disposal there to "dredged materials which are shown to be predominately sand (defined by median grain size greater than 0.125 mm and a composition of less than 10% fines) * * *." As indicated in the preamble of the Proposed Rule, EPA will insure that the materials have been shown to be predominantly coarse-grained on a project-by-project basis.

EPA agrees with the State of Florida that site management plans are needed. Such plans would be appropriate for most dumping sites, particularly ones such as the Pensacola ODMDS within State territorial waters. They would also help assure that suitable materials are disposed and would help monitor any post-dumping movement of dredged materials.

The overall management of these sites is the responsibility of EPA. Currently a Memorandum of Understanding (MOU) is pending between the Corps of Engineers, South Atlantic Division, and EPA, Region IV to effectively use the available resources of each agency for overall site management.

In general, site management will begin with the review of proposed projects for conformity to the Ocean Dumping Regulations. The projects will be reviewed to ensure that the need for ocean disposal exists and that the material is suitable for ocean disposal at the proposed site. The locations within the site where dumping for a particular project may occur will be specified. The user of the site will report actual dumping information such as the types and quantities of materials disposed and the LORAN coordinates where the actual disposal occurred.

Subsequent monitoring surveys will concentrate on the portion of the site which has been used according to site use reports. Monitoring objectives will be to: (1) Detect presence of the material, (2) determine the extent of mounding or dispersion of the material, (3) determine migratory pattern of the material, if any, (4) determine any impact associated with the migration, if any, and (5) determine if more intensive monitoring is required. The monitoring techniques available include underwater video and still photography, bathymetric measurements, side scan sonar, water quality analysis, fish trawls and sediment physical, chemical, and biological analyses. The techniques utilized for each survey will be based on a demonstrated need, on the results of past monitoring surveys at the site and the extent of disposal operations at the site.

If no significant accumulation of the material beyond the site boundary is detected, and mounding in the area used for disposal is not significant, the same area will continue to be used for disposal. If mounding becomes significant or if significant accumulation of material beyond the site boundaries is evident, the discharge point for future disposal operations will be moved to another area within the designated disposal site; and any impacts of the migration or mounding beyond the site boundaries will be assessed. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

At this time only the Mobile disposal site has a project-specific monitoring plan, as the dumping of dredged material from the deepening of Mobile Harbor is imminent. Specific plans will also be developed for the Pensacola and Gulfport sites after the MOU is completed and more specific information is available concerning the types and quantities of materials proposed for disposal. Each monitoring plan will contain quality assurance and quality control measures and will be coordinated with all appropriate state and federal agencies.

With regard to whether an easement should be obtained from the Florida Board of Trustees, we believe that this issue is premature when raised in the context of EPA site designations. As detailed above, site designations are essentially statements of EPA's judgment about the environmental suitability of a location as a potential repository for specified materials; and EPA action of designation does not authorize any use of a site for actual dumping projects. We, therefore, do not regard State requirements for leases or easements for activities *using* Florida waters as applying to mere designations for potential use, such as the designation EPA has proposed.

The question of consistency with the Florida CMP for the Pensacola site was also addressed in Governor Martinez' letter. The State of Florida continues to believe that the site is inconsistent with the CMP despite EPA's responses to previous State arguments in the notice of the Proposed Rule and EPA's stated judgment that "the Pensacola site designation is consistent with the Florida CMP to the maximum extent practicable." Specifically, the State indicated that the site would not be consistent unless the following conditions are met:

1. Relocation of the site to be designated so that it is wholly outside the Fort Pickens Aquatic Preserve,
2. Obtaining an easement from the Trustees by EPA prior to designation,
3. Consideration of alternatives to ocean disposal such as upland disposal (beach nourishment) for suitable material, and
4. Formulation of a management program for the site as well as stricter interpretation of the language of the rule with regard to material to be disposed therein.

For the reasons stated earlier in this section, EPA continues to believe that the Pensacola site designation is consistent with the Florida CMP to the maximum extent practicable as required by section 307 of the Coastal Zone Management Act (CZMA). EPA also believes that the Mobile site and the Gulfport sites are consistent with the Coastal Zone Management Plans (CZMP) of Alabama and Mississippi, respectively. Letters sent to the State of Alabama and Mississippi dated October 7, 1984, expressing EPA's determination of CZMP consistency received no comments from either state.

D. Action

The designation of the Pensacola, Mobile, and two Gulfport sites as EPA-approved ocean dumping sites is today being published as final rulemaking. Overall management of these four sites is the responsibility of the Regional Administrator of EPA, Region IV.

It should again be emphasized that a site designation does not constitute or imply EPA's approval of disposal of materials at sea. Before dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

E. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact

on a substantial number of small entities. EPA has also determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this designation does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Final Rule does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This Final Rule notice represents the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Date: February 9, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator, Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 409 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. Sections 1412 and 1418.

2. Section 228.12 is amended by removing paragraph (a)(1)(i)(H) and by adding paragraphs (b)(48), (b)(49), and (b)(50) to read as follows:

§ 228.12 Delegation of management authority for dumping sites.

* * * * *

(b) * * *

(48) Pensacola, Florida Dredged Material Disposal Site—Region IV.

Location:

30°17'24" N., 87°18'30" W.
30°17'00" N., 87°19'50" W.
30°15'36" N., 87°17'48" W.
30°15'15" N., 87°19'18" W.

Size: 2.48 nmi².
Depth: Average 11 m.
Primary use: Dredged Material.
Period of use: Continuing use.
Restrictions: Disposal shall be limited to dredged materials which are shown to be predominantly sand (defined by median grain size greater than 0.125 mm and a composition of less than 10% fines) and meet the Ocean Dumping Criteria.

(49) Mobile, Alabama Dredged Material Disposal Site—Region IV.

Location:

30°10'00" N., 88°07'42" W.
30°10'24" N., 88°05'12" W.
30°09'24" N., 88°04'42" W.
30°08'30" N., 88°05'12" W.
30°08'30" N., 88°08'12" W.

Size: 4.8 nmi².
Depth: Average 14 m.
Primary use: Dredged materials.
Period of use: Continuing use.
Restrictions: Disposal shall be limited to dredged materials which meet the Ocean Dumping Criteria.

(50) Gulfport, Mississippi Dredged Material Disposal Sites—Region IV.

Location: Eastern Site

30°11'10" N., 88°58'24" W.
30°11'12" N., 88°57'30" W.
30°07'36" N., 88°54'24" W.
30°07'24" N., 88°54'48" W.

Western Site

30°12'00" N., 89°00'30" W.
30°12'00" N., 88°59'30" W.
30°11'00" N., 89°00'00" W.
30°07'00" N., 88°56'30" W.
30°06'36" N., 88°57'00" W.
30°10'30" N., 89°00'36" W.

Size: Eastern—2.47 nmi². Western—5.2 nmi².
Depth: Eastern—9.1 m. Western—8.2 m.
Primary use: Both sites—Dredged material.
Period of use: Both sites—Continuing use.
Restrictions: Disposal shall be limited to dredged materials which meet the Ocean Dumping Criteria.

[FR Doc. 88-3901 Filed 3-3-88; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1320

[Ex Parte No. MC-1]

Regulations for Payment of Rates and Charges, Penalty Charges for Nonpayment

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its credit regulations at 49 CFR Part 1320 to allow rail, motor, and water common carriers, and regulated freight forwarders to assess and recover damages for the collection of delinquent freight charges. To afford carriers and freight forwarders (collectively called "carriers") flexibility in dealing with nonpaying shippers, the final rules allow carriers three separate and mutually exclusive methods to recoup collection charges. They are: (1) By tariff rule, a carrier may require that a shipper, as a precondition to receiving a discount, agree to pay the freight bill within a specified period of time, and may provide that payment beyond that date will be at the non-discounted rate; or (2) by tariff rule, a carrier may assess straight liquidated damages for a precise dollar or percentage amount of the unpaid freight bill; or (3) a carrier may, outside of its tariff, recoup collection costs by contract in a bill of lading.

EFFECTIVE DATE: April 3, 1988.

FOR FURTHER INFORMATION CONTACT:

Richard Johnson, (202) 275-7939

or

Richard B. Felder, (202) 275-7691 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The new rules are set forth below. Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

The Commission certifies that the adoption of the amendments to the credit regulations will not have a significant economic impact on a substantial number of small entities. The new rules will not require the filing of reports or recordkeeping by small entities, and will not duplicate, overlap, or conflict with any existing Federal rules.

List of Subjects in 49 CFR Part 1320

Credit, Freight forwarders, Motor carriers, Maritime carriers, Railroads.

Decided: February 17, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

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

PART 1320—EXTENSION OF CREDIT TO SHIPPERS BY RAIL COMMON CARRIERS, MOTOR COMMON CARRIERS, WATER COMMON CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The authority citation for 49 CFR Part 1320 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744.

2. Section 1320.2 is amended by redesignating paragraph (g) as paragraph (h), and by adding a new paragraph (g) to read as follows:

§ 1320.2 Extension of credit to shippers.

* * * * *

(g)(1) *Collection expense charges.* Carriers may, by tariff rule, assess reasonable and certain liquidated damages for all costs incurred in the collection of overdue freight charges. Carriers may use one of two methods in their tariffs:

(i) The first method is to assess liquidated damages as a separate additional charge to the unpaid freight bill. In doing so, the tariff rule shall disclose the exact amount of the charges by stating either a dollar or specified percentage amount (or a combination of both) of the unpaid freight bill. The tariff shall further specify the time period (which shall at least allow for the authorized credit period) within which the shipper must pay to avoid such liquidated damages.

(ii) The second method is to require payment of the full, nondiscounted rate instead of the discounted rate otherwise applicable. The difference between the discount and the full rate constitutes a carrier's liquidated damages for its collection effort. Under this method the tariff shall identify the discount rates that are subject to the condition precedent and which require the shipper to make payment by a date certain. The date certain may not be set to occur by the carrier until at least after the expiration of the carrier's authorized credit period.

(2) The damages, the timing of their applicability, and the conditions, if any, as provided by the tariff-rule methods allowed under paragraphs (g)(1) (i) and (ii) of this section also:

(i) Shall be clearly described in the tariff rule;

(ii) Shall be applied without unlawful prejudice and/or unjust discrimination between similarly situated shippers and/or consignees;

(iii) Shall be applied only to the nonpayment of original, separate and independent freight bills and shall not apply to aggregate "balance-due" claims sought for collection on past shipments by a bankruptcy trustee, or any other person or agent;

(iv) Shall not apply to instances of clear clerical or ministerial error such as non-receipt of a carrier's freight bill, or shipper's payment check lost in the mail, or carrier mailing of the freight bill to the wrong address;

(v) Shall not apply in any way to a charge for a transportation service if the carrier's bill of lading independently provides that the shipper is liable for fees incurred by the carrier in the collection of freight charges on that same transportation service.

(3) As an alternative to the tariff-rule methods allowed under paragraphs (g)(1) (i) and (ii) of this section, a carrier may, wholly outside of its tariff, assess collection charges though contract terms in a bill of lading. By using the carrier and its bill of lading, the shipper accepts the bill of lading terms.

§ 1320.3 [Amended]

3. Section 1320.3(c) is amended by inserting the term "and/or collection expense charge" after the term "service charge".

[FR Doc. 88-4752 Filed 3-3-88; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 71264-8028]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of final initial specifications for 1988.

SUMMARY: NOAA issues this notice to provide final initial specifications for the 1988 fishing year for the Atlantic mackerel, squid, and butterfish fisheries. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish specifications for the current fishing year. This action is intended to promote the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Copies of the Mid-Atlantic Council's analysis and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 617-281-3600, ext. 324.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR Part 655. Preliminary intital specifications for the 1988 fishing year for Atlantic mackerel, squid, and butterfish were published on December 11, 1987 (52 FR 47034), with request for public comment.

Specifications

The following table lists the final initial annual specifications in metric tons (mt) for the maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), comprising domestic annual harvest (DAH) [domestic annual processing (DAP) plus joint venture processing (JVP)], and total allowable level of foreign fishing (TALFF), for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. No reserves are provided under the FMP for any of these species. These initial specifications are the amounts that the Director, Northeast Region, NMFS, has determined for the 1988 fishing year beginning January 1.

TABLE.—INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE 1988 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1988

[In metric tons]

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	Illex		
Max OY [a]	44,000	30,000	[b] N/A	16,000
ABC [c]	37,000	22,500	323,000	16,000
IOY	14,036	17,000	136,000	10,072
DAH	14,000	17,000	[d] 46,000	10,000
DAP	14,000	14,000	12,000	10,000
JVP	0	3,000	20,000	0
TALFF	36	0	[e] 90,000	72

[a] Maximum OYs as stated in the FMP.
[b] Not applicable; see the FMP.
[c] IOY can be increased to this amount.
[d] Includes 14,000 mt projected recreational catch.
[e] For every 9 mt TALLFF, foreign partner is required to purchase either 3 mt JVP or 1 mt U.S. processed product.

Changes to the table of proposed preliminary initial annual specifications are summarized below.

Initial Optimum Yield

The IOY amount for Atlantic mackerel is changed from 106,000 mt to 136,000 mt. During the interim period prior to publication of this notice, the Council and NMFS had the opportunity to review an additional request for an allocation of Atlantic mackerel. The IOYs for *Loligo* and butterfish were adjusted slightly according to the FMP formula to allow for increased bycatch resulting from the increase in the IOY specification for the Atlantic mackerel fishery, i.e., *Loligo* from 24 mt to 36 mt, butterfish from 48 mt to 72 mt.

Domestic Annual Processing

DAP for *Illex* is increased from 10,000 mt to 14,000 mt. Additional information received during the public comment period indicated that U.S. processors have the intent and capacity to utilize a greater portion of the resource than was indicated in the earlier processor survey.

Joint Venture Processing

The *Illex* JVP is reduced to 3,000 mt from 7,000 mt as a result of the increase in DAP, and the specific purchase requirements have been removed. These changes are addressed in the comment section.

Total Allowable Level of Foreign Fishing

TALFF for Atlantic mackerel was increased to 90,000 mt. The increase is intended to stimulate development of the domestic Atlantic mackerel fishery. This TALFF is conditioned upon purchase of either 3 mt of Atlantic mackerel in a joint venture or one mt U.S. processed mackerel for every 9 mt TALFF.

TALFF amounts for *Loligo* and butterfish were adjusted according to the formula specified in Amendment 2 to the FMP (51 FR 10547, March 27, 1986). This adjustment is necessary to provide sufficient bycatch for the directed fishery for Atlantic mackerel.

Two of the recommended permit conditions placed on foreign fishing for Atlantic mackerel, originally in the notice of preliminary initial specifications, have been removed. They were: (1) Foreign fishing permits should stipulate that any Atlantic mackerel product taken from U.S. waters will not appear in North American markets, and (2) in considering allocations, preference is given to foreign vessels having at least a 30 mt per day processing capacity and refrigerated sea water holding tanks.

The Council's intent in recommending the first condition was to ensure that Atlantic mackerel product taken from U.S. waters by foreign vessels does not interfere with the market for U.S. product. NOAA recognizes the Council's intent to develop markets for U.S. Atlantic mackerel; however, this first condition cannot be accepted by NOAA because it is inconsistent with U.S. trade policy.

The second condition would have given preference to foreign vessels applying for joint venture allocations that had certain processing and holding capacities. The intent was to minimize the waste that may occur when a foreign vessel cannot accept a U.S. catcher boat's daily harvest because the foreign vessel does not have the capacity to handle the product. The U.S. catcher would then have to discard excess product. NMFS intends to monitor this situation via observers placed on board foreign vessels. Fishery Compliance Inspectors for the Northeast Observer Program have been instructed to report all refusals to transfer U.S. product to any foreign vessel.

Responses to Comments

Comments were submitted by Follett Fisheries III and Seafreeze Ltd., each representing several freezer trawlers; the owner of the F/V *Old Colony;* the owner of the F/V *Huntress;* National Fisheries Institute, Inc. (NFI); International Seafood Trading Corporation (ISTC); Galloway and Greenberg, attorneys representing Japan Deep-Sea Trawlers Association (JDSTA); the Delegation of the Commission of the European Communities (DCEC); American High Seas Fisheries Association (AHSFA); Point Judith's Fishermen's Cooperative (PJFC); and Scan Ocean, Inc.

Comment: ISTC commented that there should be TALFF for both squids.

Response: The commenter felt that the specification numbers had been manipulated to prevent TALFF for either species of squid and that, in fact, the ABC permitted the harvest of much more squid than the IOY allowed. This comment was addressed in relation to *Loligo* TALFF in the notice of 1987 specifications (52 FR 537, January 7, 1987). The TALFF amounts granted for 1987 provides for bycatch in the foreign fishery for Atlantic mackerel.

The Magnuson Act does not require that the entire biological production of a stock be utilized, but that OY must be achieved on a continuing basis. OY is not strictly a biological number. The framers of the Magnuson Act clearly understood that to attain the goal of developing the U.S. fishery industry to the exclusion of foreign interests, a consideration of other factors is involved. That is why the Magnuson Act permits a consideration of economic, social, and ecological factors as well as biological factors. The FMP considers all

of these factors in attempting to develop the domestic squid fishery. The IOYs in the squid fishery are set to reflect the availability of the resource the harvesting capability of the domestic fleet, and the need to foster domestic access to markets that would otherwise be satisfied by foreign caught or received squid from the U.S. exclusive economic zone. Setting the IOY at a level which precludes TALFF in order to develop the U.S. squid fishing industry is clearly defensible under the Magnuson Act.

Comment: ISTC commented that there should be a JVP for *Loligo* squid.

Response: The commenter suggests that the greatest overall benefit to the United States will be conferred by permitting the establishment of a JVP for *Loligo*, particularly in light of the fact that the IOY for *Loligo* is roughly 40 percent of the *Loligo* available for harvest. IOY is set at a level which produces the greatest overall benefit to the Nation. It is not necessarily the greatest amount of squid available for harvest. This level is set based on a consideration of biological, economic, social, and ecological factors. The thrust of the FMP, and the resulting IOY in the *Loligo* squid fishery, is the development of the U.S. *Loligo* squid fishing industry. History shows that squid harvested or received by foreign nations competes with domestically caught squid in world markets and frustrates U.S. fishery development. Consequently, in line with the goal of the Magnuson Act, the IOY has been set at a level which reasonably approximates the domestic level of *Loligo* harvest in 1988. This level reflects a dramatic increase in the level of harvest by domestic vessels over the last several years. A review of the record pertaining to the capacity and intent of our domestic processors to process *Loligo* discloses a sound record upon which to conclude that they can process the entire *Loligo* DAH. Thus, it would be inconsistent with the Magnuson Act to provide for a *Loligo* JVP.

Comment: PJFC, AHSFA, and JDSDA commented that purchase requirements for joint ventures are improper.

Response: We removed the specific purchase requirement for joint venture squid. The Regional Director will, however, closely monitor these operations to ensure that they continue to support expanded U.S. fishery efforts and eventually phase out all foreign operations. In the assignment of the value of individual joint venture operations, the Regional Director will consider Council policies, including purchase arrangements, which support U.S interests.

Comment: Seafreeze Ltd. asked, What data were used to establish the ABC level on all four species?

Response: The data used to establish the ABCs for all four species were derived from stock assessments prepared by the Northeast Fisheries Center, NMFS. Stock assessments are not limited to data from research survey cruises, as the commenter believes. Commercial fishery data are collected in each of the principle ports of the Northeast Region and are an integral part of each assessment.

Comment: Seafreeze Ltd. asked, What data were used to establish the IOY on all four species?

Response: Section 655.22(e) of the regulations for these species specifies the sources of the data used to establish the IOYs. These include the results of a survey of the capacity of, and intent to use that capacity by, domestic processors, joint venture operators, and fishermen. Also, landings, catch statistics, stock assessments, and relevant scientific information must be considered. The Council uses these sources to prepare and submit recommendations to the Regional Director for the initial annual amounts. The Council's recommendations also consider the following nine factors: (1) Total world export potential, (2) total world import demand, (3) U.S. export potential, (4) revenues from U.S. foreign fees, (5) revenues to U.S. harvesters with and without joint ventures, (6) revenues to U.S. processors and exporters, (7) U.S. harvesting productivity in relation to foreign harvest, (8) U.S. processing productivity, and (9) the effect of TALFF on markets for U.S. products.

This analysis was made available to the public during the comment period, and can be obtained by writing to the Council.

Comment: Seafreeze Ltd. asked, What were the quantities in the Mid-Atlantic Council's processor survey and what percentage of processors responded?

Response: All of the major processors, although not all of the small-volume processors, responded to the survey. In some cases the Council staff used estimates. Further information on the results of the processor survey is available in the report mentioned above. Based on the responses and estimates, the Regional Director concluded that the processors have the capacity and intent to process 25,367 mt of *Loligo*, 11,897 mt of *Illex*, 7,625 mt of Atlantic mackerel, and 7,097 mt of butterfish.

Comment: Seafreeze Ltd. asked, Why were processor survey numbers lowered?

Response: The results of the processor survey were not lowered. The processor survey provides a base from which to make determinations of DAH and DAP. DAH and DAP may be lower or higher than the results of the processor survey to bring them more in line with actual performance in the fishery. For instance, preliminary catch statistics show that last year processors utilized only 63 percent of the available DAP for squids, while the 1987 survey showed that they had the capacity and intent to harvest well in excess of the IOY. This year, processors expressed the intent and capacity to utilize only 7,625 mt of Atlantic mackerel; however, the Council recommended a DAP of 12,000 mt because the purchase requirement is expected to stimulate U.S. production. As actual processor performance reaches the level of projected capacity and intent, TALFF and JVP figures will be decreased.

Comment: Seafreeze Ltd. asked, What data are the basis for all DAH numbers?

Response: This is answered for the most part in responses to the other comments made by Seafreeze Ltd. After the IOYs are determined, the primary data used to set the DAH are the processor survey, market information, and the past performance of all sectors of the industry. The process involves more than a numerical exercise. It requires considerable judgement by NMFS to reconcile past performance, projections of stated capacity and intent, and market conditions. Essentially, the Regional Director must predict how the fishery will be prosecuted in the upcoming fishing year. History indicates that this is often an imprecise task. Given the flexibility in the management scheme embodied in the FMP, the Regional Director reasonably believes that the most judicious approach is to set specifications which parallel, within reasonable bounds, past performance of the various segments of the fishery. If these projections go awry, then there is the opportunity to allocate additional amounts from the differential between the IOY and the ABC should this be found to be in the interests of further development of the U.S. industry.

Comment: Seafreeze Ltd. asked, Why doesn't the Council believe that the U.S. freezer-trawler fleet can catch as much as they claim if the resource is available?

Response: The Council believes that the freezer trawler fleet can catch as much as they claim if the target species are available in large commerical concentrations, in areas unencumbered with fixed gear, and if market conditions are such that fishing for Atlantic mackerel, squid, or butterfish is more

attractive than fishing for other species which historically are of higher value. After considerable deliberation and debate, the Council and the Regional Director believe that these factors will not be favorable this year to attain a DAP equal to the DAH for all four species. If these factors permit processing of amounts greater than the initial level of DAP, additional amounts can be added throughout the fishing year.

Comment: Seafreeze Ltd., Follett Fisheries, the owners of F/V *Huntress* and F/V *Old Colony*, and NFI asked, How will the 7,000-mt *Illex* JVP encourage continued growth of harvesting, processing and marketing?

Response: The 7,000-mt *Illex* JVP specified in the notice of preliminary initial specifications was changed as a result of information received during the comment period from U.S. processors, documenting their capacity and intent to utilize this resource. The Regional Director believes, as do the commenters, that an increase from the amount specified in the previous fishing year would be detrimental to the growth of the domestic fishery and would send the wrong message to the industry. As stated previously, an objective of the FMP is to develop the U.S. industry. The Council has set in motion a deliberate process that reduces amounts available to foreign interests, especially where these products compete with U.S. products in the world market. U.S. processors have long claimed that *illex* TALFF and JVP frustrates the market for their product. An increase of JVP could reduce the U.S. share of the market and have the added effect of encouraging dependency on foreign processing at the expense of domestic processing.

While the freezer trawler fleet represents that they can process well in excess of the IOY, the Regional Director believes that the availability of higher-priced species and the absence of foreign fishing for them will negate the use of all but a fraction of their capacity to process *Illex*. The Regional Director expects that the *Illex* fishery will develop, as did the *Loligo* fishery, to a point where there is no TALFF or JVP. However, the *Illex* fishery is not yet to the point where a zero level of foreign involvement is warranted.

The Regional Director believes that setting the IOY for *Illex* at a level which allows for a JVP amount less than that allocated last year is the next step forward in the fishery and will result in the greatest overall benefit to the Nation. Both the New England and Mid-Atlantic Councils recommended that NMFS provide *Illex* JVP this year.

A domestic fleet of 20 to 25 small vessels is actively involved in joint ventures. In 1987, this fleet harvested the entire *Illex* JVP. Permitting domestic harvesters to take additional amounts of squid which might not be marketed shoreside, while moving processors' inventories which might not otherwise sell, is a well rounded approach for continued growth of all sectors of the industry. The Regional Director believes that 3,000 mt JVP is a reasonable next step toward phasing out foreign interests and achieving continued growth in the domestic squid fisheries.

Comment: Seafreeze Ltd., Follett Fisheries, and NFI asked, What is the economic benefit to the U.S. fishing industry from a 7,000-mt *Illex* JVP?

Response: As noted in the previous comment, the Regional Director believes a greater overall benefit will be created by reducing the *Illex* JVP to 3,000 mt. However, the economic benefit from one specification cannot be viewed in a vacuum. The fishery for *Illex* is affected by other fisheries. The progression of domestic fishery development has been slow, but deliberate. The OY for butterfish, which reduced directed foreign fishing, led to the development of the domestic butterfish fishery. Similarly, the OY level for squids which permits only a bycatch TALFF is paying dividends in terms of developing the domestic squid fishing industry. The development of the processing sector for *Loligo* squid within the constraints of the current IOY has actually precluded any JVP. Thus, we have two fisheries which were aided in their development first, by a large foreign fishing component, and later, by a shift to over-the-side purchases from domestic fishermen by the foreign fleet. Given the reduction of foreign competition for *Loligo* and butterfish both on the grounds and in the marketplace, it is reasonable to expect that a large percentage of the domestic effort, particularly that of the freezer trawlers, will be directed toward these fisheries.

The *Illex* fishery, which has produced a lesser-valued product than butterfish and *Loligo* for the world market, is developing, but is not at a point where domestic interests alone can or will provide the greatest overall benefit to the United States. The TALFF for *Illex* has been reduced to zero. This should reduce some of the competition in the markets between domestic and foreign-produced *Illex*. If foreign interests desire to get involved in an *Illex* JVP, they are expected to make contributions to the development of the domestic industry. These efforts will be monitored by the Regional Director and affect his decisions on applications and adjustments during the year. If foreign interests purchase 3,000 mt of *Illex* over the side, then some economic benefit would be conferred on the harvesting sector of the industry as well.

Comment: Seafreeze Ltd. asked, How do the Atlantic mackerel TALFF and JVP allocations to foreign vessels foster benefits to and growth of the U.S. fishing industry?

Response: The U.S. Atlantic mackerel fishery is underutilized due to limited markets. The Council's policy is to foster growth in this fishery the same way it did the squid and butterfish fisheries, by developing export markets for U.S. product by offering, for a time, TALFF and JVP as an inducement toward the purchase of U.S.-processed product. The Atlantic mackerel TALFF and JVP allocations provide benefits to the United States in several ways. First, the requirement of a JVP purchase for TALFF provides U.S. harvesters at least a temporary market for their product. Second, U.S. Processors have a market for 1 mt of their product for every 9 mt of TALFF allocated, a potential sale of 10,000 mt this year. It is hoped that U.S. product will thereby gain a foothold in the marketplace.

Comment: If there were no more foreign fishing or processing on the East Coast, how much funding and manpower in the Councils, NMFS, and the observer program could be reassigned to create an acceptable scientific base for management purposes?

Response: The Northeast Region's Fishery Management Division handles fifteen fishery management plans and preliminary management plans. In the event that foreign involvement were eliminated from the Atlantic mackerel, squid, and butterfish fisheries, no staff in the Northwest Region would be lost or transferred. NMFS no longer directly employs the observers that are placed on foreign vessels, but has an agreement with the private sector for these services. The remaining administrative staff of three would likely be redirected to provide observers on some domestic fishing vessels.

Given the controversial nature of domestic fisheries allocations, it is questionable whether any reduction in support for fisheries management will be possible when foreign fishing is phased out.

Comment: Seafreeze Ltd. commented that NMFS is keeping a few joint ventures operating in an attempt to reduce the activity of freezer trawlers.

Response: Neither NMFS nor the Council is attempting to curtail the

efforts of the freezer trawlers. As examined throughout this notice, what is being attempted is a balanced approach to the development of the U.S. industry. The Council and the Regional Director believe that until the capacity of the domestic processing sector is fully realized, elimination of all JVP and TALFF would be premature and counter to the interests of the industry as a whole.

Comment: ISTC commented that the Federal Register notice of 1988 preliminary initial specifications and request for comments should have been published on or about November 1.

Response: Regulations for the Atlantic mackerel, squid, and butterfish fisheries require that preliminary specifications for these species be published on or about November 1 each year. The process of setting the annual specifications relies heavily upon the recommendations of the Mid-Atlantic and New England Fishery Management Councils which, in turn, rely on public comment and the analysis prepared by the Mid-Atlantic Council, which is scheduled to be completed on or about October 15. This is a difficult task because the fishery is still active and the results of each sector's performance are still being compiled. To begin the process earlier would result in the analysis of a fishing year that remains substantially incomplete and would shorten the time available for public comment. The Regional Director, in conjunction with NMFS' Washington Office, seeks to achieve timely publication of the notice of preliminary specifications without jeopardizing the quality of the analysis or reducing opportunity for public comment.

Comment: ISTC commented that the Federal Register notice reducing the IOYs for squids was done too late in the season; foreign vessels had remained on the grounds awaiting a release of TALFF and it was effectively eliminated.

Response: This comment concerns a notice published on November 25, 1987, at 52 FR 45197 and is not germane to 1988 specifications. A discussion of the reason for the adjustment can be found in that notice.

Comment: PJFC commented that, because *Loligo* may be caught as a bycatch in *Illex* joint venture operations, the *Loligo* bycatch TALFF should be raised.

Response: Bycatch TALFF is not allocated for joint venture operations. Amendment 2 to the FMP at § 655.21(b)(1)(iv)(A) provides a very clear formula for determining bycatch TALFFs. Specifically, *Loligo* TALFF is equal to 1 percent of the allocated portion of *Illex*, which is zero in 1988, and 0.04 percent of the Atlantic mackerel TALFF allocation. The Atlantic mackerel allocation is 90,000 mt; *Loligo* TALFF is correctly set at 36 mt. In addition, *Loligo* caught by domestic harvesters as bycatch in *Illex* joint ventures is prohibited to be retained by a foreign vessel. There is no JVP for *Loligo*.

Comment: PJFC commented that the recommended permit condition to be applied to foreign vessels fishing for Atlantic mackerel, precluding them from returning the product to the North American market, should be adopted for *Illex* also.

Response: NOAA will not adopt the Council's recommendation for this permit condition for any species because it is inconsistent with U.S. trade policy.

Comment: PJFC and AHSFA commented that the required purchase ratio for an *Illex* joint venture is too high and that the costs will be passed on to U.S. fishermen.

Response: Purchase ratios for *Illex* joint ventures were not adopted.

Comment: Scan Ocean, Inc. commented that the specifications would not be published in time to begin the 1988 fishing year and that some accommodation should be made for operations that begin on or about January 1.

Response: NMFS worked with the State Department to release a portion of the proposed Atlantic mackerel TALFF prior to the publication of these final specifications.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: March 1, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 88-4766 Filed 3-1-88; 4:44 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 43
Friday, March 4, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

Reconsideration of Interpretation of Exportation for Purpose of Foreign Trade Zones Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of domestic associations asking that Customs reconsider its interpretation of "exportation" for purpose of the Foreign Trade Zones Act. In a published ruling, Customs held that merchandise imported under a temporary importation bond (TIB), processed in the customs territory of the U.S., and then transferred into a U.S. Foreign trade zone (zone) for manufacturing, is considered "exported." The ruling held that article into which such merchandise is manufactured in the zone may be admitted to the customs territory upon making entry and depositing estimated duties. The petitioner challenges the conclusion implicit in this ruling that because shipment of the merchandise to a zone for the purpose of manufacture is an "exportation," a TIB covering such merchandise could be cancelled, or a claim for drawback could be perfected, upon the transfer of the merchandise. The petitioner claims that the decision is without support in the Foreign Trade Zones Act, conflicts with the Congressional intent underlying the TIB provisions of the Tariff Schedules of the United States and the drawback statute, and contravenes the Customs definition of "export." The petitioner also alleges that the decision encourages imports of foreign steel for ultimate consumption in the U.S. in conflict with the national steel policy, and that the decision has an adverse competitive effect on U.S. industries. The petitioner requests that the Customs interpretation be changed. This document invites public comment with respect to the correctness of Customs decisions.

DATE: Comments must be received on or before May 3, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2324, Washington, DC 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Drawback and Bonds Branch (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

Foreign trade zones (zones) are secured areas within the United States to which certain foreign and domestic merchandise may be brought for some purposes without being subject to the Customs laws of the United States. Their purpose is to attract and promote international trade and commerce. The Foreign Trade Zones Act of 1934, as amended (19 U.S.C. 81a—81u) ("the Act") provides for the establishment and regulation of foreign trade zones in the U.S. Section 3 of the Act (19 U.S.C. 81c), allows foreign and domestic merchandise to be brought into a zone without being subject to the Customs laws of the U.S. The fourth proviso to that section expressly provides that for the purpose of the drawback laws, the warehousing laws and the laws on temporary importations under bond, merchandise may be considered exported, when admitted into a zone for the sole purpose of exportation, destruction, or storage. Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, destruction, or exhibition of merchandise in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the customs territory.

Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), provides for temporary importations under bond (TIB's). Under these provisions, merchandise to be repaired, altered or processed in the U.S., may be admitted into the U.S. under bond without the payment of duty, provided the merchandise is exported within one year from the date of importation. If merchandise entered under a TIB is not exported before the expiration of the bond period, liquidated damages in the amount of the bond may be assessed against the importer.

Section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), provides for the refund of customs duty on certain imported merchandise. This refund is known as "drawback," and is generally dependents on exportation of the imported merchandise or an article manufactured from the imported merchandise.

Section 101.1(k), Customs Regulations (19 CFR 101.1(k)), defines "exportation" as a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country.

On June 22, 1984, Customs issued ORR ruling letter 216727, which held that merchandise that is imported under a temporary importation bond (TIB), processed in the customs territory of the U.S. as defined in General Headnote (2), TSUS, and § 101.1(e), Customs Regulations (19 CFR 101.(e)), and then transferred into a U.S. zone for manufacturing is considered "exported". Accordingly, merchandise manufactured in a zone may be entered into the United States for consumption upon payment of proper duty. It is implicit in this ruling that because shipment of the merchandise to a zone for the purpose of manufacture is an "exportation," a TIB covering such merchandise could be cancelled or a claim for drawback could be perfected upon the transfer of the merchandise.

The ruling was published as C.S.D. 84–97 on June 24, 1984 (18 Cust. Bull. 1069), and republished on February 13, 1985 (19 Cust. Bull. 509), as C.S.D. 85–10. ORR letter ruling 218551 dated January 29, 1986, also followed the reasoning of C.S.D. 84–97/C.S.D. 85–10.

Interpretation Questioned

By letter dated February 25, 1987, a petition was submitted on behalf of the American Iron and Steel Institute, the Specialty Steel Industry of the United States, and the Automotive Parts and Accessories Association, challenging the correctness of C.S.D. 84–97/C.S.D. 85–10.

The petitioner claims that the decisions are without support in the Act and conflict with the Congressional intent underlying the TIB provisions of

the TSUS and the drawback statute. The petitioner stresses that the legislative purpose of zones was to foster the export trade; and the subject Customs decisions, in fostering domestic consumption of foreign steel, are contrary to that purpose. The petitioner further contends that the decisions are contrary to the long-standing concept of exportation under Customs laws as interpreted by the courts. Cited in support of this contention are *Campbell v. U.S.*, 107 U.S. 407 (1883), *Swan and Finch Co. v. U.S.*, 190 U.S. 142 (1903), and *Tidewater Oil Co. v. U.S.*, 171 U.S. 210 (1898). The petitioner further alleges that the decisions encourage imports of foreign steel for ultimate consumption in the U.S. in conflict with the national steel policy, and that the decisions have an adverse competitive effect on U.S. industries.

After review of the petition, Customs has determined that it must reconsider whether a shipment to a zone is an exportation. There is an abstract of a Customs letter dated July 1, 1965, which stated that a shipment to the Trust Territory of the Pacific Islands was an exportation within the drawback law. T.D. 56545(3) (1965). However, the binding effect of the abstract is questionable. See *Borneo Sumatra Trading Co., Inc. v. U.S.*, 56 Cust. Ct. 166, 173–174, C.D. 2624 (1966) and *Ditbro Pearl Co., Inc. v. U.S.*, 72 Cust. Ct. 1, 8–9, C.D. 4497 (1974). Moreover, in T.D. 78–459, Customs published a decision, rather than a nonbinding abstract, in which it held that the Northern Mariana Islands could not be considered to be foreign territory to satisfy the requirement of exportation under the drawback laws.

Even if a zone were considered not part of the United States for certain tariff purposes, it is not clear that shipment to a zone is an exportation. In the Act itself, Congress did not confuse sending merchandise into a zone for the sole purpose of an *exportation*, destruction, or storage, with an actual exportation; instead, Congress merely permitted that action to be considered as though it were an exportation. Similarly, under the warehouse laws § 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), shipments to certain U.S. insular possessions were permitted to satisfy a bond requirement without being an exportation. In the case of *John Rothschild and Co. v. U.S.*, 16 Ct. Cust. Appls. 442, T.D. 43190 (1929), the court specifically rejected the contention that if a place is not part of the U.S. for tariff purposes, a shipment to that place is an exportation. Likewise, in the case of *Mitsubishi International Corp. v. U.S.*, 55 Cust. Ct. 319, 325–327, C.D. 2597 (1965), the court held that a shipment to Guam was not an exportation for the purpose of the drawback laws and the laws on temporary importations under bond. The court held that Guam had not acquired the status of a foreign country and that an exportation is a shipment to a foreign country with the intent of joining it to the commerce of that country.

Comments

Before making a determination on this matter, Customs invites written comments from interested parties on this issue. The petition, as well as all of the comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:00 p.m. at the Regulations Control Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: February 25, 1988.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 88–4749 Filed 3–3–88; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 349

[Docket No. 80N–145A]

Ophthalmic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; and Reopening of Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record for over-the-counter (OTC) ophthalmic drug products to include only those data on antiinfective ingredients that were submitted after the previous closing of the administrative record. The agency is also providing for the administrative record to remain open for 120 days to allow for the submission of public comment on that data. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final monograph on OTC ophthalmic drug products other than those containing antiinfectives. The agency intends to publish its final decision on OTC ophthalmic antiinfectives in a future issue of the **Federal Register.**

DATE: Written comments by July 5, 1988.

ADDRESS: Data are on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, where written comments may be submitted.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 28, 1983 (48 FR 29788), FDA published a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which OTC ophthalmic drug products would be generally recognized as safe and effective and not misbranded. In considering the antiinfective portion of the ophthalmic monograph, the agency has determined that there are complex scientific issues that need to be resolved before a final determination can be made with respect to ingredients in this class. In addition, after the administrative record previously was closed, data, including new data on the use of yellow mercuric oxide as an OTC ophthalmic antiinfective, that may be relevant to resolving these issues were submitted to the agency. These issues and the new data are described in a letter from FDA to Commerce Drug Company (Ref. 1) that is available in the Dockets Management Branch.

The issues relating to ophthalmic antiinfective ingredients do not directly relate to the other segments of the ophthalmic monograph. Accordingly, in order to allow publication of the other segments of the ophthalmic final monograph without undue delay, elsewhere in this issue of the **Federal Register**, FDA is publishing the final monograph on ophthalmic drug products other than those containing an antiinfective.

FDA has on occasion received new data bearing on a proposed rule after

the closing of the administrative record. See the **Federal Register** of August 30, 1983 (48 FR 39242). Because the antiinfective portion of the ophthalmic monograph contains complex scientific issues that need to be resolved before a final determination can be made with respect to ingredients in this class, the agency is reopening the administrative record for OTC ophthalmic drug products to include only those data on antiinfective ingredients that were submitted after the closing of the administrative record. The administrative record will remain open until July 5, 1988, for submission of public comments on that data.

Reference

(1) Letter from W. E. Gilbertson, FDA, to H. Gordon, Commerce Drug Company, coded LET007, Docket No. 80N-0145, Dockets Management Branch.

This notice serves to inform interested persons of the existence of new data on yellow mercuric oxide as an OTC ophthalmic antiinfective; their availability for review at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday; and to provide for the filing of written comments by July 5, 1988, on yellow mercuric oxide as an antiinfective in ophthalmic drug products. Three copies of all comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Dated: November 16, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-4584 Filed 3-3-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 6]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking; Corrections.

SUMMARY: This notice corrects errors occurring in the notice of proposed rulemaking published on December 29, 1987, that would, in pertinent part, establish a category of headlamps known as "integral beam headlamps", and new aimability performance requirements. As part of a proposed paragraphing change, it also restated existing requirements, including humidity tests for headlamps with replaceable light sources. Several typographical errors occurred in the sections mentioned which must be corrected.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, National Highway Traffic Safety Administration, Washington, DC 20590 (202-366-5263).

SUPPLEMENTARY INFORMATION: On December 29, 1987, NHTSA published a comprehensive notice of proposed rulemaking in which paragraphs of Motor Vehicle Safety Standard No. 108 would be renumbered, and new requirements were proposed that are intended to relieve some of the regulatory burden upon manufacturers of motor vehicles and motor vehicle headlamps (52 FR 49038). As published, the Notice contains a few errors involving improper paragraph references, an incomplete word, and an erroneous temperature statement, which must be corrected.

Specifically, in proposed S 7.5(e)(2)(iii) and (3)(iii) (p.49049) references appear to paragraphs "(f)(2)(i) and (f)(2)(ii)", and "(f)(3)(i) and (f)(3)(ii)". Paragraph "(f)" should be "(e)". Accordingly, these paragraphs are corrected to read "(e)(2)(i) and (e)(2)(ii)" and "(e)(3)(i) and (e)(3)(ii)).

In proposed S 7.5(g) "paragraphs (f) and (g)" are referenced. This is corrected to read "paragraphs (e) and (f)".

In proposed S 7.7.5 the penultimate sentence contains the word "style". It is corrected to read "styling".

Finally, in S 8.7 (paragraph S 7.7 in the present standard) a "+/−" appears before the numbers "7" and "4" in the penultimate sentence. The minus sign is in error, and the references are corrected to "+".

(15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on February 29, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

Note: An additional correction to this document is published elsewhere in the corrections section of this issue of the **Federal Register.**

[FR Doc. 88-4765 Filed 3-3-88; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 53, No. 43
Friday, March 4, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Publication of Index of Consent Decisions

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

The uniform rules of practice governing formal adjudicatory administrative proceedings instituted by the Department, or any agency in the Department, under designated statutes and regulations (Subpart H, Subtitle A, Title 7, Code of Federal Regulations) provide for the entry of a consent decision between the parties in those proceedings at any time before the Administrative Law Judge files a decision. (7 CFR 1.138)

Although such consent decisions do not serve as legal precedents with respect to litigated cases, the Department has followed the practice of publishing those consent decisions in the Department's *Agriculture Decisions* for informational purposes. We have decided, however, that publication of such decisions is unnecessary and costly, and that informational needs can be adequately served by publishing an index of consent decisions in *Agriculture Decisions*. The consent decisions will continue to be maintained and will be available from the Department's Hearing Clerk upon request.

In order to maximize our cost savings, this policy will apply to all consent decisions issued after December 31, 1986. Accordingly, the publication of the *Agricultural Decisions* for 1987 and thereafter will not contain consent decisions, but will contain an index of those decisions.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 88-4770 Filed 3-3-88; 8:45 am]

BILLING CODE 3410-01-M

ARCTIC RESEARCH COMMISSION

Vacancy Announcement

In accordance with the Arctic Research and Policy Act of 1984 (Title I of Pub. L. 98-373), notification is hereby given of two vacancies on the Arctic Research Commission. This five member Commission is appointed by the President. One vacancy occurs among one of the "* * * three members appointed from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences." The second vacancy occurs from the "* * * one member appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic."

FOR FURTHER INFORMATION CONTACT: Mr. W. Timothy Hushen, (213) 743-0970.

Mr. W. Timothy Hushen,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 88-4727 Filed 3-3-88; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 7115-01 and 7115-02]

Actions Affecting Export Privileges; Donald McLean Individually and d/b/a ISEC Communications, Inc.

In the matter of: Donald McLean individually and doing business as ISEC Communications, Inc., Respondent; Docket Nos. 7115-01 and 7115-02.

Summary

Pursuant to the Default Decision and Order of the Administrative Law Judge, and substance of which is affirmed by me, Donald McLean, individually and doing business as ISEC Communications, Inc., with an address at 52 Wharf Street, L'Original, Ontario, Canada, is denied for a period of ten (10) 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 Export Administration Regulations (15 CFR Parts 368-399).

Order

On January 27, 1988, the Administrative Law Judge entered his recommended Default Decision and Order in the above referenced matter. Pursuant to section 2412(c)(1) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2402 (1982 and Supp. III 1985)), that Default Decision and Order has been referred to me for final action. Having examined the record, and based on the facts of this case, I affirm the substance of the findings, conclusions, and penalties made and imposed by the Administrative Law Judge, modifying the language, however, in accordance with the attached Default Decision and Order signed by me and made a part hereof by express reference.

This constitutes final agency action in this matter.

Date: February 29, 1988.

Paul Freedenberg,

Acting Under Secretary, Export Administration.

Actions Affecting Export Privileges; Donald McLean individually and d/b/a ISEC Communications, Inc.

In the matter of: Donald McLean individually and doing business as ISEC Communications, Inc., Respondent; Docket Nos. 7115-01 and 7115-02.

Default Decision and Order

On December 17, 1986, the Acting Director Office of Export Enforcement, International Trade Administration,[1] U.S. Department of Commerce (Agency), issued a charging letter alleging that Donald McLean individually and doing business as ISEC Communications, Inc., (Respondent) of 52 Wharf Street, L'Original, Ontario, Canada had

[1] When the administrative proceedings were initiated in these matters, the Office of Export Enforcement was a part of the International Trade Administration of the United States Department of Commerce. On October 1, 1987, in accordance with the pertinent provisions of the Export Administration Act of 1979, as amended, and a Departmental directive from Bruce Smart, then-Acting Secretary of Commerce, implementing those provisions, the Office of Export enforcement was moved within the Department from the International Trade Administration to the newly-created Export Administration.

committed multiple violations of §§ 387.5 and 387.6 of the Export Administration Regulations (15 CFR Parts 368–399) (regulations). The record reflects that the charging letter was served upon Respondent on December 29, 1986. Respondent has failed to answer said charging letter. Section 388.8 of the regulations provides:

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

In accordance with this section, Agency counsel filed such a motion for a default Order on December 21, 1987. The Agency also submitted documentary evidence to support the allegations made in the charging letter. On December 24, 1987, the Administrative Law Judge issued an Order To Show Cause, why the Respondent should not be held in default. The Respondent has failed to file an answer to the charges or to that Order.

Facts

On or about September 4, 1981, McLean placed ISEC Communications purchase order No. A422, with Tektronix, Inc., of Albany, New York, for three dual trace oscilloscopes (Govt. Ex. 4 at 1). Each of these oscilloscopes was controlled at that time under ECCN 1584A and required a validated license for export to Switzerland or any other destination (except Canada, if the oscilloscopes were shipped to Canada for use there) (Govt. Ex. 5 at 2).

On or about October 5, 1981, McLean had the oscilloscopes shipped from Tektronix to an address that he claimed was that of his company, ISEC Communications, in Manchester, New Hampshire Govt. Ex. 4 at 2 and 3). Shortly thereafter, on or about October 13, 1981, McLean had the three oscilloscopes transported by Maisland Transport, a trucking company, from Manchester, New Hampshire, to Concord Freight Systems at Dorval Airport in Dorval, Quebec, Canada (*Id.* at 4 and 6). On or about October 16, 1981, McLean had the oscilloscopes shipped, by Swissair (*Id.* at 5 and 6), to Getra, S.A., c/o General Transport, A.G., of Basel, Switzerland, without obtaining the validated export license required by Section 372.1(b) of the Regulations.

The evidence that McLean had the oscilloscopes shipped to Switzerland a few days after they arrived in Canada, demonstrates that Respondent McLean never intended that the commodities in question were to remain in Canada for use there.

McLean also caused false statements to be made on the relevant Shipper's Export Declaration by causing Canada, to be listed as the ultimate destination of the commodities in question. This is substantiated by the fact that, on the one hand, McLean caused ISEC Communications of Montreal, Canada to be listed on the Shipper's Export Declaration (*Id.* at 7) as the ultimate consignee of the oscilloscopes. Yet, he arranged to have the oscilloscopes transported directly to Montreal, Canada (*Id.* at 4), for virtually immediate shipment to Switzerland (*Id.* at 5 and 6).

The other nine shipments which provide the basis for the further charges in this matter were executed by McLean in a manner virtually identical to that of the events described above. In five of the remaining nine shipments (Govt. Exs. 6, 7, 8, 9 and 10), McLean ordered equipment, controlled for reasons of national security (Govt. Ex. 5), from Tektronix of Albany, New York (Govt. Exs. 6, 7, 8, 9, and 10), and caused it to be shipped through New Hampshire and then, through either Dorval or Mirabel Airport in Canada, to Switzerland via Swis Air (*Id.*). In addition, in connection with the shipments represented by Exhibits 6, 8, 9 and 10, McLean indirectly caused a Shipper's Export Declaration to be filed with the United States Customs Service. This Shipper's Export Declaration listed ISEC Communications of Montreal, Canada, as the ultimate consignee of the commodities in question, even though, McLean knew that Switzerland and not Canada was the ultimate destination of those shipments.

As to the remaining four shipments (Govt. Exs. 11, 12, 13 and 14), they differ from the others only in that McLean ordered the pertinent equipment from Hewlett-Packard, not Tektronix.

Conclusion

The exhibits and representations by Agency counsel fully support the nineteen charges made in the December 17, 1986, charging letter, which alleged that beginning on or about October 13, 1981, to on or about June 30, 1982, McLean exported or caused to be exported from the United States through Canada to Switzerland, ten shipments of U.S.-origin test and measurement equipment and oscilloscopes without applying for and obtaining from the United States Department of Commerce the validated export licenses required by § 372.1(b) of the Export Administration Regulations. By so doing he violated § 387.6 of the Regulations with respect to each of the shipments. (15 CFR 387.6)

In connection with nine of the ten shipments McLean also falsified and concealed material facts on an export control document by causing ISEC Communications of Montreal, Canada, to be listed as the ultimate consignee of the Shipper's Export Declaration, knowing that Switzerland was in fact the ultimate destination of the shipments with respect to each of those nine shipments that conduct and representations constituted separate violations of § 387.5 of the regulations. (15 CFR 387.5)

I find that an Order denying export privileges to the Respondents for 10 years from the date that a final order is entered in this proceeding is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act, and the regulations.

Order

I. For a period of 10 years from the date of the final Agency action, Respondent and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to matters which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. All outstanding individual validated export licenses in which Respondent 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. In substance this Order affirms the findings, conclusions, and penalties made by Hugh J. Dolan, Administrative Law Judge on January 27, 1988 with respect to the allegations made in the charging letter.

VII. This Order shall be made available to the public. A copy of this Order shall be served on McLean and published in the **Federal Register.**

Date: February 29, 1988.

Paul Freedenberg,

Acting Under Secretary for Export Administration.

[FR Doc. 88-4741 Filed 3-3-88; 8:45 am]

BILLING CODE 3520-DT-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by James E. Daspit From an Objection by the Mississippi Department of Wildlife Conservation

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On January 8, 1988, James E. Daspit (Appellant) filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the Mississippi Department of Wildlife Conservation (State) to the Appellant's certification that his proposed dredging and filling of wetlands for construction of an indented boat slip, bulkheading and a road in Hancock County, Mississippi would be consistent with Mississippi's coastal management program. The State's objection precludes the U.S. Army Corps of Engineers (Corps) from issuing to the Appellant a permit, required by section 10 of the River and Harbor Act of 1899 and section 404 of the Federal Water Pollution Control Act, to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the **Federal Register** and a local newspaper.

FOR FURTHER INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: March 1, 1988.

James W. Brennan,

Acting General Counsel.

[FR Doc. 88-4768 Filed 3-3-88; 8:45 am]

BILLING CODE 3510-08-M

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of availability of reports; notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1988 ocean salmon fisheries. As required by the final framework amendment to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, this notice announces the availability of Council documents, and dates and locations of Council meetings and public hearings which comprise the complete schedule for determining proposed and final modifications to ocean salmon management measures.

DATES: See **"SUPPLEMENTARY INFORMATION"** for the dates of the scheduled meetings.

ADDRESSES: Send written comments to Lawrence Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; 503-221-6352.

FOR FURTHER INFORMATION CONTACT: Lawrence Six, 503-221-6352.

SUPPLEMENTARY INFORMATION: All Council meetings are open to the public and public comment on pertinent issues is solicited at specific times during the meetings. Written comments may be addressed to the Council office. Further details of each meeting will be available in the Council news releases and the **Federal Register** or by contacting the Counci office directly.

The Council's schedule for development of ocean salmon fishery management recommendations for 1988 follows:

March 2, 1988—Council reports which summarize the 1987 salmon season and project the expected salmon stock abundance for 1988 are available to the public from the Council office.

March 7-11, 1988—Council and its advisory entities meet at the Seattle Airport Hilton to adopt proposed 1988 regulatory options for public review. On March 7 the Salmon Advisory Subpanel

(SAS) develops a coordinated preliminary regulatory option for the 1988 season. On March 8, using advisor, agency, and public input, the Council formulates up to three proposed options. On March 9, the Salmon Plan Development Team (SPDT) reviews the proposed options before the Council tentatively adopts them for analysis by the SPDT and staff economist. On March 11, the Council reviews its advisor analyses, tribal, and public comments on the tentative options, and adopts final proposed 1988 regulatory options for public hearing.

March 22, 1988—"Preseason Report II-Analysis of Proposed Regulatory Options for 1988 Ocean Salmon Fisheries" mailed to the public.

March 29-April 4, 1988—Public hearings are held to review the proposed regulatory options adopted by the Council. Public hearing sites are San Francisco and Eureka, CA; Coos Bay and Astoria, OR; and Seattle, WA. Specific times and locations will be made available in advance of the meetings.

April 4–8, 1988—Council and its advisory entities meet at the Clarion Hotel in San Francisco to adopt final 1988 regulatory measures. On April 4, the SAS develops its final recommendations for the 1988 regulatory measures. On April 5, the Council tentatively adopts final 1988 regulatory measures for analysis by the SPDT and staff economist. On April 7, the Council reviews its advisor analyses, tribal and public comments, and adopts the final 1988 regulatory measures.

May 1, 1988—Federal ocean salmon fishery management regulations implemented by NMFS through promulgation of management measures for the season.

Dated: February 29, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–4717 Filed 3–3–88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled separate public meetings of its Future of Groundfish Fisheries Committee and its industry Maritime Support Group, as follows:

Future of Groundfish Fisheries Committee: Will convene March 14, 1988, at 9 a.m., at the Old Federal Building, Room B–045, 605 West Fourth Avenue, Anchorage, AK, to continue developing a recommendation for the North Pacific Council regarding long-term management of the groundfish fisheries off Alaska. The public meeting will adjourn on March 15.

Maritime Support Group—The Group was recently formed to examine issues involved in a proposal to give U.S. transport and bulk fuel carriers preferential treatment over foreign vessels providing services to foreign fish processors operating off Alaska. The Group will convene March 30, 1988, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, Building 4, Room 2039, 7600 Sand Point Way NE., Seattle, WA, to review the results of a survey of communities and companies that provide services at sea and shoreside in Alaskan waters. The survey is intended to determine the extent of current U.S. operations; assess the capacity of communities and companies to provide services at sea and shoreside, and establish rough estimates as to near-term expansion plans.

For further information about the above meetings contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: February 29, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 88–4716 Filed 3–3–88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Marine World Foundation (P172B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:*
   Marine World Foundation
   Marine World Parkway
   Vallejo, California 94589
2. *Type of Permit:* Public Display
3. *Name and Number of Marine Mammals:*
   Atlantic bottlenose dolphins (*Tursiops truncatus*), 10
4. *Type of Take:* Capture and maintain.
5. *Location of Activity:* Between Mobile Bay and mouth of Mississippi River; SE Texas Coast and Mississippi Sound
6. *Period of Activity:* 2 Years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: March 1, 1988.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–4781 Filed 3–3–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions; Correction

In FR Doc. 88–4150 appearing on page 5816 in the issue of Friday, February 26, 1988, make the following correction:

On page 5816, under the heading "Commodities" the next line should read "Slacks, Utility, Woman's".

C. W. Fletcher,

Executive Director.

[FR Doc. 88–4742 Filed 3–3–88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

March 3, 1988.

The USAF Scientific Advisory Board Study on Integrated Avionics will meet on 21–23 March 1988, from 8:00 a.m. to 5:00 p.m., at Wright-Patterson, AFB, OH.

The purpose of this meeting is to review the status of technology programs and full-scale development programs pertinent to Air Force efforts in Integrated Avionics.

This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Richard P. Dwyer,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 88–4833 Filed 3–3–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

National Guard Bureau; Availability of an Environmental Impact Statement (EIS); Orchard Training Area, ID

AGENCY: National Guard Bureau, DOD/Idaho Military Division, Idaho National Guard, DOD.

ACTION: Notice of Availability of an Environmental Impact Statement: Proposed Mission Expansion/Multiple Construction at Orchard Training Area, Idaho.

Background

Orchard Army National Guard Training Area is a Bureau of Land Management (BLM) owned, state operated, federally funded installation. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and the Idaho Military Division have, acting as co-lead agencies, prepared a Draft Environmental Impact Statement on the proposed master plan contruction and mission expansion at Orchard Training Area, Idaho. On December 11, 1986, a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register**. A scoping meeting (in accordance with the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508)) was conducted on January 7, 1987, at Gowen Field, Idaho, to identify significant issues related to the proposed master plan construction/mission expansion at Orchard Training Area.

Action

The proposed action includes renovation and rehabilitation of existing facilities, construction of new facilities, range improvements, development of new ranges and associated maneuver areas, and a potential for increased training site utilization. The Draft Environmental Impact Statement addresses direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

In addition to the proposed actions, three alternatives were considered in the Draft EIS:

(a) No Action (Status quo)

(b) Modification/Alteration of Proposed Action

(c) Conduct actions at another location

Document Availability

The selection of the preferred actions in the Draft Environmental Impact Statement does not constitute a final decision. A final Environmental Impact Statement will be prepared and published based on comments received on the Draft EIS. The Final EIS and comments on that document will be used by the Army National Guard to reach a Record of Decision. Copies of the Draft EIS may be obtained by writing or telephoning: LTC Richard Brown, The Adjutant General's Office, Idaho Military Division, P.O. Box 45, Boise, Idaho 83707–4507, (208) 389–5286.

Request for time, date and location for the public meeting and submission of comments on the Draft Environmental Impact Statement should be addressed to the above.

Lewis D. Walker,

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

[FR Doc. 88–4599 Filed 3–3–88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Mayhews Landing Project, Regulatory Permit Application No. 13199–75, Alameda County, CA

AGENCY: San Francisco District, U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY:

1. Proposed Action

Mayhews Landing Associates, Hayward, California, has applied for a Department of the Army permit under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and under Section 404 of the Clean Water Act (33 U.S.C. 1344) to construct a housing development on a 126-acre site in the city of Newark, Alameda County, California. Approximately 73 of the 126 acres would be developed with the remaining 53 acres to be dedicated to wildlife and endangered species habitat. The San Francisco District, Corps of Engineers and the city of Newark will prepare a joint Federal/State environmental impact document (Environmental Impact Report/Environmental Impact Statement (EIR/EIS)) for the proposed project pursuant to the National Environmental Policy Act and the California Environmental Quality Act.

2. Alternatives

The alternatives being considered by the Corps of Engineers at this time are:

a. Applicant's preferred plan as described in "1" above.

b. Reduced project plan consisting of 59-½ acres to be developed with 262 lots and less than 1 acre of fill.

c. Alternative land use on-site.

d. Alternative site.

e. No action (permit denial).

Additional alternatives identified during the scoping process would also be considered in the EIR/EIS.

3. Scoping Process

a. Scoping meetings will be held on Wednesday, March 16, 1988 at city of Newark Offices, 37101 Newark Boulevard, Newark, Califonria. The meetings will be held at 1:00–5:00 p.m. (for agencies) and 7:00–9:00 p.m. (for the general public). Public and private interest groups and the public are invited to participate in the scoping process by attending the evening scoping meeting. The purpose of the scoping meetings is to identify significant issues and alternatives to be considered in depth in the EIR/EIS.

Any person may also participate in the scoping process by submitting written comments to the Corps of Engineers. Comments should be addressed to the District Engineer, San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California, 94105–1905 and received within 30 days of the date of this notice.

b. The significant issues which have been identified to date and which would be analyzed in the EIR/EIS include impacts on:

(1) Water quality and hydrology
(2) Air quality
(3) Noise conditions
(4) Wildlife and habitat
(5) Endangered species
(6) Aeshetics
(7) Traffic conditions
(8) Wildlife sanctuaries
(9) Land use
(10) Cultural Resources
(11) Growth inducement

Additional significant issues identified during the scoping process would also be analyzed in the EIR/EIS.

c. Environmental review and consultations as required by Sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); Section 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Endangerd Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order 11988, "Floodplain Management:, 24 May 1977; Executive Order 11990, "Protection of Wetlands", 24 May 1977; and other applicable statutes or regulations will be conducted concurrently with the EIR/EIS process.

4. It is estimated that the Draft EIR/EIS would be made available to the public in June/July of 1988.

5. Questions regarding the scoping process or preparation of the EIR/EIS may be directed to Lin Grayson, Regulatory Branch (415–974–0421). General questions concerning the processing of the permit application may be directed to Angie Coleman at the same telephone number.

Date: February 24, 1988.

Galen H. Yanagihara,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88–4728 Filed 3–3–88; 8:45 am]

BILLING CODE 3710–FS–M

[CESPK–PD–R]

Intent To Prepare a Draft Supplemental Environmental Impact Statement; Cache Creek Basin, CA

AGENCY: U.S. Army Corps of Engineers, DOD

ACTION: 1. *Proposed Action*: The Cache Creek Basin Project was authorized in section 401 of the Water Resources Development Act of 1986. The Act authorized construction of outlet channel improvements to reduce flood damages on the rim of Clear Lake, and enlargement of the levees at the Cache Creek Sediment Basin to restore capacity that has been lost to sedimentation since the basin was built in 1937 as part of the Sacramento River Flood Control Project. The Cache Creek project area is divided into two discrete locations: The Clear Lake Outlet Channel improvements are in Lake County, while the Cache Creek Sediment Basin is downstream in Yolo County. Congress authorized alternative plan number 8, instead of the plan recommeded by the army for the outlet channel. The authorized project would enlarge and/or widen about 4.5 miles of the existing 5-mile-long Clear Lake Outlet Channel. In lieu of constructing the recommended bypass channel at the outlet to Clear Lake, the project will be accomplished by removing the rock formation at the outlet channel and widening and deepening the channel in accordance with alternative plan number 8 in the Corps Feasibility Report and Final Environmental Impact Statement dated August 1979 and published in House Document No. 98–134, 98th Congress, 1st Session, dated November 16, 1983. Also authorized is the restoration of the capacity of the Cache Creek Sediment Basin by raising the perimeter levees. The wildlife refuge described in the Corps' Feasibility Report and Final EIS for the sediment basin has been referred to the Department of the Interior and deleted from the Corps' project. The environmental impacts of the authorized project (alternative 8), which provides for widening and deepening of the existing channel instead of the channel bypass that was emphasized in the 1979 EIS, will be described and coordinated with all concerned in a supplemental environmental impact statement. The deletion of the wildlife refuge from the Cache Creek Sediment Basin portion of the project was the subject of an Environmental Assessment and a Finding of No Significant Impact dated 30 July 1986.

2. *Alternatives:* The alternatives discussed in this SEIS will be the authorized plan as compared to no action and an update of information discussed in the 1979 FEIS.

3. *Scoping of the Draft SEIS:* Close coordination will be maintained with Federal, State, and local agencies, conservation organizations, and concerned individuals. The impacts to wildlife and riparian resources will be analyzed using habitat evaluation procedures jointly with the U.S. Fish and Wildlife Service, California Department of Fish and Game, and the Corps. A preliminary cultural resources reconnaissance has been conducted for the project area, and detailed evaluations will be conducted where required.

4. *Scoping Comments and Meetings:* Comments are requested by letter or at a scoping meeting. The environmental concerns described above will be discussed in a scoping meeting. To assist in scheduling the meeting, those interested are invited to propose dates, locations, and a list of topics for discussion. These should be provided as soon as possible. Comments received will be used to identify and evaluate significant resources in the project area. Impacts to significant resources will be analyzed in detail in the SEIS. Other resources will be described and discussed in less detail.

5. *Estimated Date of the SEIS:* The draft SEIS is scheduled to be circulated for public review and comment in June 1989. ADDRESS: Correspondence concerning this project and the SEIS should be addressed to Colonel Wayne J. Scholl, District Engineer, Sacramento District Corps of Engineers, Attention: CESPK–PD–R, 650 Capitol Mall, Sacramento, California 95814. Questions concerning the proposed action and the draft document can be answered by Michael Welsh at (916) 551–1861.

Wayne J. Scholl,

Colonel, Corps of Engineers, District Engineer.

February 23, 1988.

[FR Doc. 88–4692 Filed 3–3–88; 8:45 am]

BILLING CODE 3710–GH–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 88-07-NG]

Amoco Energy Trading Corp.; Application To Extend Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 12, 1988, of an application filed by Amoco Energy Trading Corporation (Amoco Energy) requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 196 (Order No. 106), issued on January 29, 1986 (ERA Docket No 85-34-NG), be amended to extend its term for two years beginning on September 23, 1988. Amoco Energy's existing blanket import authorization allows it to import up to a maximum of 70 Bcf of Canadian natural gas. Amoco Energy requests that during this extended period it be authorized to import up to a term maximum of 300 Bcf of natural gas, an increase of 230 Bcf over its present authorization for the period ending September 23, 1990.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed no later than April 4, 1988.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The gas will be supplied by individual producers, producer groups, associations, and pipeline companies on a short-term basis. Amoco Energy would import such gas either on its own behalf or on behalf of others, including Canadian suppliers and U.S. purchasers, for sale to industrial end-users, electric utilities, agricultural users and gas distribution companies. According to the application, the terms and conditions of each supply contract will be determined as a result of negotiations between Amoco Energy and the Canadian supplier and would be responsive to competitive market prices in the U.S. domestic gas market.

Amoco Energy maintains that its requested increase in authorized volumes is necessary to supply the needs of end-use customers and local distribution companies who are increasingly availing themselves of opportunities to purchase natural gas in the short-term and spot market on competitive terms.

Amoco Energy proposes to continue to file quarterly reports with the ERA within 30 days after the end of each calendar quarter giving the details of the individual transactions. Amoco Energy's prior quarterly reports filed with the ERA indicate that approximately 1.059 Bcf of natural gas were imported under Order No. 106 through December 31, 1987.

Amoco Energy intends to use existing transmission systems and does not require the construction of new or separate facilities for the continued importation of Canadian natural gas supplies under the requested extension of its blanket authorization term.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 4, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Amoco Energy's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the

hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 26, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-4711 Filed 3-3-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

[Notice 88-2]

Invitation; Application for Special Research Grant Program; Nuclear Engineering Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE) announces its interest in receiving applications from colleges and universities for Special Research Grants that will support research efforts aimed at advancing the state-of-the-art in nuclear and applied nuclear science. Research must be directed toward the following topical areas: (1) Nuclear materials that address the applications of engineering sciences to improve knowledge of material behavior in a radiation environment typical of nuclear power plants, identification of improved materials for plant life extension, and modeling of corrosion and erosion in such environments; (2) real-time instrumentation that identifies and applies innovative measurement technologies to nuclear reactors, including, but not limited to real-time instrumentation to detect the on-set of embrittlement in structural materials used in reactors and improvements in the measurement of two-phase flow properties of coolants in nuclear reactor environment; (3) advanced reactor concepts that identify and apply nuclear reactor concepts to improved power reactor performance, including, but not limited to, advanced converter reactors, liquid metal reactors, liquid water reactors and high temperature gas-cooled reactors, as well as non-power or non-terrestrial applications of nuclear reactors; (4) applied nuclear sciences that address improvements in the applications of radiation and the understanding of the interaction of radiation with matter, including medical applications or radiation, health physics, improved shielding calculational methods and radiation dosimetry; (5) nuclear reactor operations that will address the innovative application of engineering sciences to improvements in the safety and reliability of nuclear power reactor operation, including advances in reactor dynamics and control, understanding of the migration of radionuclides in reactor/systems, innovative reprocessing and waste management techniques for actinide recycle, improvements in plant instrumentation and the application of human-factors engineering and expert systems to reactor operations; (6) neutronics that address improvements in reactor computational methodologies and knowledge of fission processes, including core neutronics, reactor kinetics, radiation transport, fission product behavior, nuclear fuel management and fuel cycle optimization; and (7) nuclear thermal hydraulics that address improvements of models and analysis of thermal hydraulic behavior in a nuclear reactor system, including applications to multiphase flow, convective and conductive heat transport, degraded core cooling and emergency coolant flow.

DATES: To permit timely consideration for awarding during FY 1988, applications submitted in response to this Notice should be received by the Idaho Operations Office, Contracts Management Division by May 2, 1988.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Idaho Operations Office, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402, ATTN: Program Notice 88-2.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine M. Richardson, R&D Contracts Branch, Idaho Operations Office, Idaho Falls, ID 83402, (208) 526-1699.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $2M will be available for grant awards during FY 1988. Additionally, future fiscal year awards will be subject to the availability of funds. General information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide. The application kit and guide is available from the U.S. Department of Energy, Idaho Operations Office (see address above). Telephone requests may be made by calling (208) 526-1699. The Catalog of Domestic Assistance Number for this program is 81.049.

In accordance with the recommendation in the conference report to the Energy and Water Development Appropriation Act, 1988, eligibility for this solicitation is limited to colleges and universities.

Issued in Washington, DC, on February 26, 1988.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 88-4733 Filed 3-3-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER88-263-000 et al.]

Southwestern Electric Power Co. et al.; Electric Rate and Corporate Regulation Filings

February 29, 1988.

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

1. Southwestern Electric Power Company

[Docket No. ER88-263-000]

Take notice that on February 22, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a letter agreement, dated September 2, 1987, between SWEPCO and Empire District Electric Company (Empire). The Letter Agreement provides for the sale by SWEPCO to Empire to capacity (without reserves) and associated energy for the period June 1, 1988 through August 31, 1988. Empire may, on a month to month basis and upon 30 days' notice to SWEPCO, extend the term of the Letter Agreement through November 30, 1988. SWEPCO also tendered for filing a Notice of Cancellation with respect to the Letter Agreement.

SWEPCO requests an effective date of June 1, 1988 for the Letter Agreement to coincide with the initiation of service and an effective date of midnight November 30, 1988 for the Notice of Cancellation. Accordingly, SWEPCO requests waiver of the Commission's notice requirements to permit the filing of the Notice of Cancellation more than 120 days prior to the proposed effective date. Copies of the filing were served upon Empire and the Missouri Public Service Commission.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this document.

2. Centel Electric-Kansas

[Docket No. ER88-261-000]

Take notice that on February 22, 1988, Centel Electric-Kansas (Centel), formerly Centel Corporation, Western Power Division, tendered for filing the following proposed rate schedules:

Rate Schedule 88–CWh–2, replacing Rate Schedule 85–CWh–2, for service to ten rural electric distribution cooperatives (the RECs, KEPCo);

Rate Schedule 88–MWh–5, replacing Rate Schedule 85–CWh–5, for service to 11 distribution municipalities (the Municipals);

Service Schedule 88–A–1, replacing Service Schedule 85–A–1, for firm partial requirements service to the cities of Anthony, Ashland, Attica, Beloit, Hoisington, Kingman, Osborne, Pratt, Stockton, Russell, and Washington, Kansas (the firm Municipals);

Transmission Tariff 88–TSv–1, replacing Transmission Tariff 85–TSv–1, for firm transmission service to Kansas Electric Power Cooperative, Inc. (KEPCo).

Transmission Tariff 88–TSv–2, replacing Transmission Tariff for firm transmission service to Kansas Electric Power Cooperative, Inc. (KEPCo).

Service Schedule 88–D–1, replacing Service Schedule 85–D–1, for Supplemental Power partial requirements customers eligible for service under Service Schedule 88–A–1.

Centel proposes April 23, 1988 as the effective date of these rate schedules and states that copies of this filing were served upon each of the wholesale customers affected by this filing and the Kansas State Corporation Commission.

The proposed rate schedule set forth increase/decreased rates designed to produce an increase in revenues from jurisdictional sales and service of $1,222,170 based on the twelve month period ending December 21, 1988, and will increase/decrease revenues by 17.59% for service to the RECs, 4.02% for service to the Municipals, −.47% for service to the Firm Municipals, no change for service to the Supplemental Power Municipals and 16.98% for transmission service to KEPCo. Centel states that its proposed increases in rates are due to the increasing cost of providing service, and along with recognizing four deviations from the calculation of present rates:

1. Line loss study provided by Black & Veatch Consultants supports a loss factor of 10.39% versus 5.21% currently used.

2. Allocation credit for SWPA peaking power to KEPCo lowered from 20 MW to 12.5 to reflect actual operating experience.

3. Effects of the 1986 Tax Reform Act.

4. Change in return-on-equity required from 14.50% to 13.00%.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER88–159–000]

Take notice that on February 19, 1988, Commonwealth Edison Company (Edison) tendered for filing on behalf of itself, Illinois Power Company, Iowa-Illinois Gas and Electric Company, Commonwealth Edison Company of Indiana, Northern Indiana Public Service Company and Wisconsin Power and Light Company, revised Addenda to the Interconnection Agreements between Edison and the other electric utility companies. In addition, Edison and the other electric utility companies. In addition, Edison filed revised Addenda to the Interconnection Agreements between Edison and Central Illinois Light Company and Interstate Power Company, respectively. The Addenda as originally filed has provided for capped maximum prices for short-term power and general purpose energy (or other similar excess energy) rate schedules in the various Interconnection Agreements. The revised Addenda further amend the rate schedules provide a minimum price for such transactions.

The filing utilities request waiver of the Commission's notice requirements in order to permit an effective date of February 1, 1988. Copies of the filing were served upon the Illinois Commerce Commission, the Public Service Commission of Indiana, the Michigan Public Service Commission, the Public Service Commission of Wisconsin, the Iowa State Commerce Commission, the Minnesota Public Utilities Commission and all parties to the Interconnection Agreements.

Comment date: March 10, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER88–264–000]

Take notice that on February 22, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Boston Edison Company (Boston Edison). The agreement provides for a charge of 2.3 mills per kilowatthour for transmission of power purchased by Boston Edison from companies in the Pennsylvania-New Jersey-Maryland Power Pool.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of January 1, 1988.

Con Edison states that a copy of this filing has been served by mail upon Boston Edison.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company

[Docket No. ER88–262–000]

Take notice that on February 22, 1988, Duke Power Company (Duke Power) tendered for filing a supplement to the Company's Electric Power Contract with Clemson University. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 259.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer provides for the following increase in contract demand: Delivery Point No. 2 from 16,000 KW to 20,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of April 21, 1988.

According to Duke Power, copies of this filing were mailed to Clemson University and the South Carolina Public Service Commission.

Comment date: March 10, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Power and Light Company

[Docket No. ER88–265–000]

Take notice that on February 22, 1988, Kansas Power and Light Company tendered for filing a proposed change in its Federal Energy Regulatory Commission Electric Service Tariff No. 123.

Schedule H—Participation Power Service provides for the purchase of Participation Power by Midwest Energy, Inc. for the period June 1, 1988, through September 30, 1988.

Copies of the filing were served upon Midwest Energy, Inc., and the Kansas Corporation Commission.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER88–258–000]

Take notice that on February 22, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the regulations

under the Federal Power Act, as a rate schedule, an agreement with Rochester Gas & Electric Corporation (RG&E). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to RG&E during the period of RG&E's Ginna nuclear unit's scheduled outage. Service under this agreement was scheduled to commence on February 7, 1988 and be terminated on March 6, 1988 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with Rochester Gas & Electric Corporation and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that February 7, 1988 be allowed as the effective date of the filing.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company

[Docket No. ER88-260-000]

Take notice that on February 19, 1988, Ohio Edison Company (Ohio Edison) tendered for filing proposed changes in its FERC Electric Tariff Schedule No. 150 and Supplements 1 through 5 applicable to sales and service to American Municipal Power-Ohio (AMP-Ohio). The proposed changes would increase revenues for jurisdictional sales and service as the net result of a decrease in the regulatory capacity charge and an increase in the regulation energy charge by $1,022,096.97 based on the twelve months ending January 31, 1989.

Ohio Edison proposed an effective date of February 2, 1988 for the increase in charges for Regulation Capacity and Energy.

Ohio Edison states that the reason for the proposed change for Regulation Capacity and Energy charges is to conform with the retail General Service Large Customers tariffs as approved by the Public Utilities Commission of Ohio in the manner provided for and as described in Schedule 150 and its Supplements.

According to Ohio Edison, a copy of the filing was served on AMP-Ohio, the jurisdictional customer affected by the proposed charges and the Public Utilities Commission of Ohio.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Savannah Electric and Power Company

[Docket No. ER88-267-000]

Take notice that on February 22, 1988, Savannah Electric and Power Company tendered for filing a proposed Interchange Agreement between Savannah Electric and Power Company and South Carolina Public Service Authority. The proposed Agreement establishes a three way connection between Savannah Electric and Power Company, the operating subsidiaries of the Southern Company and South Carolina Public Service Authority. It includes rate schedules for emergency assistance, short term power, and economy interchange transactions.

Copies of this filing were served upon South Carolina Public Service Authority.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER88-266-000]

Take notice that on February 22, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Atlantic City Electric Company dated December 15, 1987.

The December 15, 1987 agreement is to provide that from time-to-time Niagara Mohawk Power Corporation or Atlantic City Electric Co. (each a "Party" and collectively "The Parties") may have excess energy available, and it is further anticipated that from time-to-time the other Party may be able economically to purchase such energy.

A Certification of Concurrence is included from Atlantic City Electric Co. assenting to the Tariff Filing being submitted by Niagara Mohawk Power Corporation.

Copies of this filing were served upon Atlantic City Electric Co. and the New York State Public Service Commission.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER88-259-000]

Take notice that on February 22, 1988, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Connecticut Light & Power Company (CL&P). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to CL&P. Service under this agreement commenced on December 15, 1987 and shall terminate on February 29, 1988 unless extended in writing by mutual agreement.

NYSEG has filed a copy of this filing with Connecticut Light & Power Company and with the Public Service Commission of the State of New York.

NYSEG requests that the 60-day filing requirement be waived and that December 15, 1987 be allowed as the effective date of the filing.

Comment date: March 14, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4777 Filed 3-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-235-000 et al.]

Texas Eastern Transmission Corp. et al.; Natural Gas Certificate Filings

March 1, 1988.

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

1. Texas Eastern Transmission Corporation

[Docket No. CP88-235-000]

Take notice that on February 16, 1988, Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP88-235-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain modifications to its White Castle interconnection with Southern Natural Gas Company (Southern) in Iberville Parish, Louisiana, necessary to permit the delivery of natural gas by TETCO to Southern for transportation for TETCO, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TETCO states that Southern has filed with the Commission an application in Docket No. CP87–529–000 requesting a certificate of public convenience and necessity authorizing Sourthern to transport gas on behalf of TETCO pursuant to the the terms of a July 15, 1987, transportation agreement (Agreement). It is stated that Sourthern would transport for TETCO for its own account and as agent for its existing sales customers, up to 40,000 Mcf of natural gas per day. It is stated that the Agreement provides that TETCO would cause gas to be delivered to Southern for transportation at, among other points, the existing point of interconnection between the facilities of TETCO and Sourthern on Southern's Duck Lake-White Castle loop line, Iberville Parish, Louisiana.

In Docket No. CP88–235–000, it is stated that TETCO seeks authorization to construct and operate modifications to its gas metering facility at the existing White Castle interconnection with Southern's system in Iberville Parish, Louisiana, in order to enable TETCO to deliver gas to Southern for subsequent transportation by Southern and redelivery to TETCO pursuant to the terms of the Agreement. TETCO estimates that the cost of the proposed modification of facilities to be $321,000 which will be financed initially by funds on hand. It is stated that permanent financing will be undertaken as part of TETCO's overall long-term financing program at a later date.

TETCO further requests that the Commission specifically authorize TETCO to track in its rates on file with the Commission, on a current, as billed basis, the transportation charges incurred by TETCO for the transportation rendered by Southern pursuant to the Agreement.

It is stated that the Agreement provides that for the transportation service rendered each month, TETCO shall pay to Southern the sum of the following: (i) A reservation charge of $146,000 per month and (ii) a transportation charge consisting of an amount equal to the product of the monthly redelivery quantity times $0.01 per MMBtu. It is stated that this rate is a firm negotiated rate which is based on Southern's estimate of the revenue required to recover the cost of providing this service.

TETCO states that it has heretofore tracked in its rates on file with the Commission, through its PGA filings, the facility charges incurred for its purchases from Southern, which are subject to Southern's related abandonment application in Docket No. CP87–528–000. It is stated that Southern will utilize its same system facilities to render its proposed transportation service as were utilized to render the sales service, and accordingly, the identical non-gas costs of service attributable to the system facilities which will be incurred and recovered by Southern in its charges to TETCO. Accordingly, TETCO submits that it is appropriate that it be allowed to continue to recover such costs by tracking the transportation charges as billed by Southern.

Comment date: March 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Exploration & Production, a Division of Arkla, Inc.

[Docket No. CP88–214–000]

Take notice that on January 19, 1988, Arkla Exploration & Production, a Division of Arkla, Inc. (E&P), 525 Milam Street, Shreveport, Louisiana 71101–3532, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon by transfer to its affiliate, Arkla Exploration Company (AEC), production properties and related facilities which are used by E&P in the sale of natural gas to Arkla Energy Resources, a Division of Arkla, Inc., and various other interstate pipelines, all as more fully set out in the application which is on file with the Commission and open for public inspection.

E&P request that said abandon by transfer be effective January 1, 1988, as to all of its properties that produce natural gas over which the commission retains jurisdiction under the Natural Gas Act, as more fully described in the application. E&P states that the transfer is proposed as part of a corporate reorganization to eliminate duplicative record-keeping requirements and allow a better focus on natural gas production activities. E&P further states that the public convenience and necessity permits the requested abandonment for the reasons that: (1) There will be no change in the service provided to its customers since the same service which E&P provides from the production properties here involved will be provided by AEC under E&P's existing rate schedules and intracompany operating statement; (2) there will be no change in the price of the natural gas since E&P has been authorized by the Commission to value its production at NGPA prices and the gas will continue to be sold to existing third party purchasers and Arkla Energy Resources, (AER) the interstate pipeline division of Arkla, Inc., by AEC at the lesser of such prices or the prices established under the existing intracompany operating agreement or rate schedule, as applicable; and (3) by consolidating all exploration and production activities in one corporate unit, that unit will be better able to continue to serve AER and other interstate pipelines in an economic and reliable manner.

Comment date: March 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP88–243–000]

Take notice that on February 18, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88–243–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for the authority to construct and operate a sales meter station and to reallocate volumes of gas to facilitate the sale and delivery of gas to an existing customer, Utah Gas Service Company (Utah Gas), for resale to Chevron, U.S.A. (Chevron), under Northwest's blanket certificate issued in Docket No. CP88–243–000 (20 FERC ¶ 62,412), pursuant to section 7(c) of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to construct and operate a new sales metering station by the addition of a four inch orifice meter run and appurtenent facilities, which will be located in its Red Wash Meter Station in Uintah Country, Utah, for the sale of up to 25,000 terms of natural gas under its DS–1 Rate Schedule to Utah Gas for resale to Chevron. Northwest proposes to provide firm service to the Red Wash Meter Station by using quantities of gas previously authorized for sale and delivery under its Rate Schedule DS–1 by reallocating assigned maximum daily delivery quantities (MDDQ) at five existing meter stations as follows:

	Existing MDDQ (Therms)	Proposed MDDQ (Therms)
Moab, Utah	20,605	5,605
Monticello, Utah	5,300	3,300
Rio Algom Corporation	6,000	3,000
Vernal, Utah	16,000	11,000
Chevron, U.S.A. (Red Wash)	0	25,000
Total	47,905	47,905

Northwest states there will be no increase in the total daily contract quantity of gas it is authorized to sell

and deliver to Utah Gas. Northwest avers the proposed sales will be made by using existing system capacity without impairing service to any of its existing customers.

Northwest estimated the total cost of the proposed meter run will be approximately $46,300. Utah Gas has agreed to pay for all direct construction costs, excluding any Northwest labor charges.

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

4. Tennessee Gas Pipeline Company a Division of Tenneco Inc.

[Docket No. CP88-236-000]

Take notice that on February 16, 1988, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No, CP88-236-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Goetz Oil Corporation (Goetz) under the authorization issued in Docket No. CP87-115-000 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.

Tennessee would perform the proposed transportation service for Goetz, a marketer, for end-use by industry or commerce in New York state, pursuant to a gas transportation agreement dated December 30, 1987. The term of the transportation agreement is from the date of execution and will remain in effect for two years and month to month thereafter until terminateed by either party upon thirty days written notice. Tennesse proposes to transport on a peak day 20,000 dekatherm; on an average day 661 dekatherm; and on an annual basis 241,265 dekatherm of natural gas for Goetz. Tennessee proposes to receive the gas at various receipt points in offshore Louisiana and in the states of Texas and New York. The volumes would be redelivered to points in New York and Pennsylvania located at interconnections with Consolidated Gas Transmission Corporation, National Fuel Gas Supply Corporation and New York State Electric & Gas Corporation, the downstream transporters. The gas transportation agreement states that Goetz warrants that all upstream and downstream transportation arrangements are in place, or will be in place as of the requested effective date of service.

Tennessee states that it would perform such transportation service for Goetz pursuant to its Rate Schedule IT. It is alleged that Tennessee would charge the legally effective Gas Research Institute funding unit where applicable. Tennessee states that no new facilities would be constructed in order to provide the proposed transportation service. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Tennessee commenced such selfimplementing service on January 14, 1988, as reported in Docket No. ST88-2035-000.

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

5. Williston Basin Interstate Pipeline

[Docket No. CP88-221-000]

Take notice that on February 3, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota, filed in Docket No. CP88-221-000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate one new delivery tap, metering and appurtenant facilities for an industrial customer, under the certificate issued in Docket Nos. CP82-487-000, *et al.*, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate the delivery tap in order to deliver approximately 500 Mcf of natural gas per day to Koch Hydrogen Company's (Koch) Tree Top compressor station for use a compressor fuel. It is stated that the facilities would be located in Billings County, North Dakota and that they would cost approximately $10,835, which cost would be reimbursed by Koch.

Williston Basin indicates that it would transport the gas for Koch pursuant to Williston Basin's Rate Schedules S-2 and T-3. It is stated the installation of the proposed facilities would have no significant effect on Williston Basin's peak day or annual requirements.

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

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205) of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4773 Filed 3-3-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-72-000]

State of West Virginia Department of Energy, Oil and Gas Division; Preliminary Findings

March 1, 1988.

On various dates in 1980 and 1984, the State of West Virginia, Department of Energy, Oil and Gas Division, (West Virginia) filed 23 notices of well category determinations with the Federal Energy Regulatory Commission.[1] The determinations pertained to seventeen wells that qualified under section 107 of the Natural Gas Policy Act of 1978 (NGPA) [2] and six that qualified for NGPA section 108 status.[3]

Absent Commission action, the notices would have become final after 45 days pursuant to § 275.202(a) of the Commission's regulations. Because the Commission advised West Virginia within 45 days of receipt of each notice that the notices were incomplete, lacking either sufficient explanation of the basis for each determination or sufficient information to complete the applications, none of the determinations has become final. The Appendix to this order summarizes each determination and its deficiency.

Under section 503(a)(2) of the NGPA, when a jurisdictional state or federal agency makes a determination that natural gas qualifies under one of the pricing categories found in NGPA sections 102, 103, 107, and 108, the jurisdictional agency is required to provide the Commission with notice of the determination. Section 503(c)(3) allows the Commission to prescribe the form and content of filings made with jurisdictional agencies in connection with such determinations. Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by substantial evidence.

Since its initial conclusion that the notices were incomplete, the Commission has attempted to obtain the information required to complete the notices. On March 2, 1987, the Commission sent a letter to West Virginia and the applicants advising that the Commission may reverse the West Virginia determinations and that refunds may be required if the required information is not received. No response has been received for any of the subject cases.

Based on the foregoing, the Commission believes that a preliminary finding should be issued that the notices of determinations submitted by West Virginia are not supported by substantial evidence. Such a finding is consistent with the finding in *Delta Gas Corporation*,[4] where the data to support a determination was incomplete for a substantial period of time and a final order reversed the determination.

The Commission orders:

(A) Pursuant to § 275.202 of the Commission's regulations and section 503 of the NGPA, the Commission makes a preliminary finding that the above-mentioned 23 well category determinations made by the State of West Virginia and described in the attached Appendix are not supported by substantial evidence in the record on which the determinations were made.

(B) Jurisdictional agencies, interested parties, or any other person may, within 30 days after issuance of this notice, submit written comments and request an informal conference with the Commission's staff.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[1] See Appendix.

[2] 15 U.S.C. 3317 (1982).

[3] 15 U.S.C. 3318 (1982).

[4] 35 FERC ¶ 61,097 (1986) (preliminary finding); 36 FERC ¶ 61,188 (1986) (final order).

APPENDIX.—INCOMPLETE WEST VIRGINIA NOTICES OF DETERMINATION

Applicant	Well name	NGPA section	FERC No.	West Virginia Docket No.	Initial FERC letter	Deficiency in record
Cooperative Oil Investments, Inc.	S.A. Kelly, No. 1 (M-1).	108	JD80-16358	790220-108-021-2605	4-4-80	Record shows inappropriate qualifying period used.
L&M Exploration, Inc.	Waint No. 1	108	JD80-19420	790405-108-021-2759	4-24-80	Record shows too much gas production during qualifying period.
Biscayne Oil & Gas, Inc.	Hewitt No. 1	108	JD80-21925	790331-108-107-0717	5-8-80	Record shows too much oil production during qualifying period.
Do	Hewitt No. 2	108	JD80-21927	790331-108-107-0726	5-8-80	Do.
Do	Hewitt No. 3	108	JD80-21929	790331-108-107-0731	5-8-80	Do.
Cabot Corporation	John Gilbert, Tr., No. 29 1563.	108	JD80-26724	790330-108-109-0671	5-29-80	Record shows too much gas production during qualifying period.
Cabot Oil & Gas Corporation.	Pocahantas Land No. 73.	107	JD84-04469	820806-107-047-0126	12-15-83	Designated tight formation not identified with well log or driller's report.
Do	Pocahantas Land No. I-32.	107	JD84-04479	821001-107-109-0853	12-15-83	Do.
Panther Fuel Company.	Richards No. 1	107	JD84-18198	830812-107-085-6190	3-15-84	Well log not marked with shale base line and gamma ray index.
Do	Ralph Seese No. 1.	107	JD84-18199	830812-107-085-6055	3-15-84	Do.
Cabot Oil & Gas Corporation.	R.T. Trout, No. 1-1436.	107	JD84-45490	840706-107-079-0577	9-27-84	Record shows well is not producing from a Devonian shale interval.
Do	Alice Coney, No. 1-1428.	107	JD84-45491	840706-107-079-0570	9-27-84	Do.
Cabot Oil & Gas Corporation.	Raymond City, No. 3-1420.	107	JD84-45492	840706-107-079-0562	9-27-84	Record shows well is not producing from a Devonian shale interval.
Do	JJ Sigman, No. 1-1405.	107	JD84-45493	840706-107-079-0545	9-27-84	Do.
Do	Hardy No. 5-1516	107	JD84-45494	840706-107-079-0469	9-27-84	Do.
Do	McLean No. 33-1233.	107	JD84-45495	840706-107-079-0363	9-27-84	Do.

APPENDIX.—INCOMPLETE WEST VIRGINIA NOTICES OF DETERMINATION—Continued

Applicant	Well name	NGPA section	FERC No.	West Virginia Docket No.	Initial FERC letter	Deficiency in record
Do	Pocahantas Coal No. 14-1213.	107	JD84-45496	840706-107-079-0347	9-27-84	Do.
Do	Ray Smith No. 1-1524.	107	JD84-45497	840706-107-035-1022	9-27-84	Do.
Do	Putnam No. 13-960.	107	JD84-45499	840706-107-035-0091	9-27-84	Do.
Do	Bull Creek No. 22	107	JD84-45500	840706-107-035-0602	9-27-84	Do.
Cabot Oil & Gas Corporation.	H.F. Brotherton, No. 1-1494.	107	JD84-45498	840706-107-035-0990	9-27-84	Record is unclear if well is producing from a Devonian shale interval.
Do	N.B. Thompkins, No. 4.	107	JD84-47853	840713-107-039-0263	10-11-84	Record shows well is not producing from a Devonian shale interval.
Do	Maxine Williams, No. 1-923.	107	JD84-47854	840713-107-039-0402	10-11-84	Record is unclear if well is producing from a Devonian shale interval.

[FR Doc. 88-4775 Filed 3-3-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. FA88-8-000]

Alamito Co.; Order to Show Cause

Issued: March 1, 1988.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Alamito Company (Alamito) has on file with the Commission power sales agreements with the San Diego Gas and Electric Company (San Diego), and with Tucson Electric Power Company (Tucson).[1] Both power sales agreements are cost-of-service formula contracts that provide for monthly recovery of actual costs plus return and income taxes. Under both agreements the income tax allowance includable in the billings is determined by application of the statutory federal and state tax rates to the amount of equity return permitted in the billings under the contract terms.

On June 23, 1987, the Chief Accountant advised Alamito that the Commission's audit staff was reviewing the company's calculation of the income tax allowances under its power sales agreements.[2] The audit staff has completed its review and has concluded that Alamito's billings to both Tucson and San Diego have exceeded amounts permitted under the terms of its tariffs. The audit staff attributes the excessive billings to Alamito's adjustment to the income tax allowance portion of the billings for differences between the tax and book basis of Alamito's ownership interest in Springerville Unit No. 1 [3] and San Juan Unit No. 3. According to the audit staff, these adjustments are not provided for under the power sales agreements.

Alamito disagrees. It maintains that the practices it has followed in billing Tucson and San Diego for an additional income tax allowance for these items reflect the understanding of the parties to the power sales agreements and conform to generally accepted accounting principles. Alamito states that neither Tucson nor San Diego has objected to its billing practices and has tendered a letter from Tucson stating that Alamito's billing practices accord with Tucson's understanding of its power supply agreements.[4]

This matter essentially involves an interpretation of the provisions of the power sales agreements which govern the calculation of the income tax allowance includable in billings to Tucson and San Diego.[5] Since there is disagreement on this point between the Commission's audit staff and Alamito and Tucson, the Commission will proceed under Rule 209 of the Commission's Rules of Practice and Procedure, 18 CFR 385.209 (1987), and order Alamito to show cause why the Commission should not direct refunds of amounts billed under its formula rates pursuant to the disputed income tax provisions. The Commission is acting under the authority of sections 205, 206 and 309 of the Federal Power Act, 16 U.S.C. 824d, 824e, 825h (1982), to consider this issue and to determine whether Alamito's billings to Tucson and San Diego have been in accordance with the provisions of Alamito's formula rates.[6]

Any person desiring to be heard should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1987). All such protests or motions should be filed within 30 days of the date of issuance of this order.

The Commission orders:

(A) Alamito is hereby ordered to show cause why the Commission should not direct refunds of amounts billed under its formula rates pursuant to the disputed income tax provisions.

(B) Alamito shall file its answer to the order to show cause within 30 days of the date of issuance of this order.

(C) The Acting Secretary shall promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-4774 Filed 3-3-88; 8:45 am]
BILLING CODE 6717-01-M

[1] Alamito's power sales agreement with San Diego is designated as Alamito Rate Schedule FERC No. 1. Alamito's 12-year power sales agreement with Tucson is designated as Alamito Rate Schedule FERC No. 3. This power sales agreement was amended December 26, 1986. Alamito Company, 37 FERC ¶ 61,279 (1986). The restated power sales agreement is designated as Alamito Rate Schedule FERC No. 4.

[2] Letter dated June 3, 1987, to Alamito from the Chief Accountant at 2.

[3] In December 1986, Alamito sold Springerville Unit No. 1 (except for some common facilities) to a group of institutional investors. San Diego Gas & Electric Company v. Alamito Company, *et al.*, 41 FERC ¶ 63,012 at 65,065 (1987).

[4] Letter dated February 6, 1987, from Tucson to Alamito. Alamito did not supply a similar letter from San Diego.

[5] *See* Alamito Rate Schedule FERC No. 1, Revised Exhibit No. 4, item 5; Alamito Rate Schedule FERC No. 3, Exhibit Nos. 1 and 2, item 5; and Alamito Rate Schedule FERC No. 4, Exhibit Nos. 1 and 2, item 5.

[6] To the extent that the Commission may determine that Alamito has improperly billed under its formula rates, the Commission can always direct refunds with interest, since, in such an event, the company would have violated the terms of its filed rate. *See* Alamito Company, 41 FERC ¶ 61,312 (1987). We express no opinion in this order as to whether Alamito's billings have been improper.

Office of Hearings and Appeals

Cases Filed, Week of November 6 Through November 13, 1987

During the Week of November 6 through November 13, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC. 20585.

February 26, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 6 through November 13, 1987]

Date	Name and location of applicant	Case No.	Type of submisison
Oct. 13, 1987	Amoco/Belridge/South Dakota, Pierre, SD	RM21-89 and RM8-90.	Request for modification/rescission in the Amoco and Belridge second stage refund proceedings. If granted: The February 12, 1985, decision and order issued to South Dakota would be modified regarding the State's application for refund submitted in the Amoco and Belridge second stage refund proceedings.
Nov. 9, 1987	Judith M. Gibbs, Richland, WA	KFA-0139	Apeal of an information request denial. If granted: The September 28, 1987, Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded and Judith M. Gibbs would receive access to a copy of portions of the Battelle Policy Guide.
Do	Martin/Koch Refining Co., Wichita, KS	RR240-1	Request for modification/rescission in the Martin Oil refund proceeding. If granted: The Novemberr 9, 1987, decision and order issued to Koch Refining Co. (Case No. RF240-16) would be modified regarding the firm's application for refund in the Martin Oil refund proceeding.
Do	Missouri Jefferson City, MO	KEG-0023	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper-well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Do	Seattle Post-Intelligencer, Seattle, WA	KFA-0140	Appeal of an information request denial. If granted: The Seattle Post-Intelligencer would receive access to travel records of certain Bonneville Power Administration officials, without being charged clerical fees for the document search.
Nov. 10, 1987	Hunsaker Truck Lease, Dallas, TX	RR270-25	Request for modification recession in the stripper well refund proceeding. If granted: The October 14, 1987, Decision and order issued to Hunsaker Truck Lease (Case No. RF270-31) would be modified regarding the firm's application for refund as a surface transporter in the stripper well refund proceeding.
Nov. 12, 1987	Coalition for Safe Power, Portland, OR	KFA-0141	Appeal and information request denial. If granted: The October 16, 1987, freedom of information request denial issued by the DOE Richland Operations Office would be rescinded and the Coalition for Safe Power would receive access to a copy of a recent study on converting the WNP-1 nuclear reactor to a weapons material production reactor.

REFUND APPLICATIONS RECEIVED

[Week of November 6 to November 13, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
11/06/87 thru 11/13/87	Crude Oil refund applications received.	RF272-9665 thru RF272-10204
11/06/87 thru 11/13/87	Gulf refund applications received.	RF300-3376 thru RF300-3607
08/10/87	Malden Taxi, Inc.	RF262-6
11/09/87	Optima Mercantile Co.	RF253-37
12/05/87	Tenneco Oil Co.	RF250-2741
11/12/87	Inland Partner	RF271-239

REFUND APPLICATIONS RECEIVED —Continued

Date received	Name of refund proceeding/ name of refund applicant	Case No.
06/25/87	Phillips Petroleum Co.	RF265-2583
11/13/87	Toms River Chemical Corp.	RF299-37
11/13/87	Leach Camper Sales, Inc.	RF299-38
11/13/87	Searight Co., Inc.	RF299-39

[FR Doc. 88-4778 Filed 3-3-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders for Week of January 11 Through January 15, 1988

During the week of January 11 through January 15, 1988, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Petition For Special Redress

Missouri, 1/11/88, KEG-0023

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the State of

Missouri. The State sought approval to use Stripper Well monies to expand the Missouri Safety Center, a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. In its review of Missouri's Petition, the DOE disagreed with Missouri's claim that the primary purpose of the proposed expansion of the Safety Center was to conduct Driver Energy Conservation Awareness Training (DECAT). Rather, the DOE found, DECAT instruction at the proposed facility would be a minor component of an otherwise safety-related curriculum. The DOE concluded that Stripper Well monies should not be used to fund a driver safety program that promised only incidental energy-related benefits. Accordingly, Missouri's Petition for Special Redress was denied.

Request For Exception

Triangle Gasoline Company of Butler, PA, 1/15/88, KEE–0140

Triangle Gasoline Company (Triangle), of Butler, Pennsylvania, filed an Application for Exception in which it sought relief from its obligation to submit Form EIA–821, entitled "Annual Fuel Oil and Kerosene Sales Report". In considering Triangle's request, the DOE found that the firm had failed to demonstrate that it was experiencing a significantly greater hardship than other reporting firms. Accordingly, exception relief was denied.

Refund applications

Bay Ridge Lumber Co., Inc. et al., 1/13/88, RF272–1352, et al.

The Doe issued a Decision and Order approving Applications for Refund submitted by nine claimants for crude oil overcharge funds collected by the DOE. The OHA found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. OHA granted the claimants a total refund of $5,568 based on their purchases of 27,844,163 gallons of refined petroleum products.

Conoco, Inc./Power Pak Company, Inc., 1/11/88, RF220–250

The DOE issued a Decision and Order granting an Application for Refund filed by the Power Pak Company, Inc. in the Conoco, Inc. special refund proceeding. Conoco, Inc., 13 DOE ¶ 85,316 (1985). Power Pak, a reseller/retailer of Conoco refined petroleum products, claimed a refund for its purchases of Conoco motor gasoline. In support of Power Pak's claim that it was injured by Conoco's alleged overcharges, the firm submitted cost banks and a three-part competitive disadvantage test. After examining Power Pak's application and supporting documentation, the DOE concluded that Power Pac should receive a refund totaling $26,756, representing $18,710 in principal and $8,046 in accrued interest.

Downs Carpet Company, Inc., 1/14/88; RF272–3073

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds. The application was based on purchases of refined petroleum products made during the period August 19, 1973 through January 27, 1981. To estimate its fuel purchase volume, the Applicant multiplied the number of square yards of carpet it produced during the claims period by an average number of gallons consumed per square yard. The refund granted in this Decision is $323.

Florida Rock Industries, Inc., 1/14/88; RR272–6

The DOE issued a Decision and Order denying a Motion for Reconsideration file by Florida Rock Industries, Inc. (FRI). FRI sought reconsideration of the denial of its Application for Refund in the DOE's Subpart V crude oil refund proceeding. That application was denied because an affiliate of FRI, Florida Rock and Tank Lines (Tank Lines), waived FRI's Subpart V rights as a condition to the affiliates' participation in the Surface Transporters (ST) refund proceeding. Upon review, the DOE found that at all relevant FRI and Tank Lines were under common ownership and control, and therefore that FRI was barred from participation in the Subpart V crude oil proceeding by the terms of the ST waiver. Accordingly, FRI's Motion for Reconsideration was denied.

Fred Shelton, et al., 1/15/88; RF272–3195, et al.

The DOE issued a Decision and Order granting 48 Applications for Refund filed in connection with the Subpart V crude oil refund proceeding. Each applicant purchased refined petroleum products during the period August 19, 1973, through January 27, 1981, and used the products for various agricultural activities. Each applicant calculated the volume of its fuel purchases by using the USDA estimate of the average annual petroleum product consumption per acre among the nation's farmers. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is $1,050.

Getty Oil Company/Gay Johnson's, Inc. et al., 1/13/88; RF265–562, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases, and elected to limit its claim on the basis of the percentage presumption of injury methodology. Each applicant was eligible for a claim below the $50,000 threshold. The sum of refunds approved in this Decision is $544,786, representing $269,480 in principal and $275,306 in accrued interest.

Getty Oil Company/Miller & Holmes, Inc., 1/13/88; RF265–2065, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant documented the volume of its Getty purchases and, in seven of the cases, elected to limit its claim on the basis of the percentage presumption of injury methodology. Each applicant was eligible for a claim below the maximum $50,000 threshold. The eighth applicant elected to limit its claim to $50,000 in accordance with the level-of-distribution presumption of injury for motor gasoline. The sum of refunds approved in this Decision is $173,438, representing $85,792 in principal and $87,646 in accrued interest.

Gulf Oil Corporation/Look Oil Company, Inc., 1/15/88; RF40–3704

The DOE issued a Decision and Order concerning duplicate Applications for Refund filed by the Look Oil Company, Inc. (Look), a retailer of Gulf petroleum products during the Gulf Consent Order period. The DOE determined that Look had received two refunds based on the same purchases from Gulf. The DOE therefore ordered Look's representative, the law firm Stoel, Rives, Boley, Jones & Grey, to remit $2,417 to the DOE. The funds to be remitted represent both the refund granted to Look and interest that would otherwise have accrued on that amount.

Jenkins Truck Line, Inc., 1/14/88; RF270–2514

The DOE issued a Decision and Order revising a previous Decision regarding several applications in the Surface Transporters refund proceeding. Due to a clerical error, the volume approved for one of the applicants, Jenkins Truck Line, Inc. (Jenkins), was incorrect. The DOE modified the previous Decision to increase the volume approved for Jenkins.

La Gloria Oil & Gas Co./E-Z Mart Stores, Inc., 1/13/88; RF263-36

The DOE issued a Decision and Order granting an Application for Refund filed by E-Z Mart Stores, Inc., a retailer of motor gasoline purchased from La Gloria Oil & Gas Company. E-Z Mart documented its purchases of motor gasoline from La Gloria during the Consent Order period, and claimed a refund below the $5,000 small claims threshold for retailers. According to the methodology set forth in *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), the DOE found that E-Z Mart was eligible for a refund from the La Gloria Consent Order fund based on the volume of its purchases times the volumetric refund amount. The refund approved in this Decision totaled $296.

Marathon Petroleum Company/Century Oil Company, 1/13/88; RF250-1501, RF250-1501

The DOE issued a Decision and Order concerning an Application for Refund filed in the Marathon Petroleum Company special refund proceeding. Century, a purchaser of Marathon gasoline and middle distillates, provided evidence that it experienced a competitive disadvantage in all of its purchases of gasoline from Marathon during the Consent Order period. Therefore, the DOE granted Century a refund of $27,815 based on the full amount of its gasoline purchases. The DOE, however, denied the portion of Century's claim based upon purchases of middle distillates because Century's total claim (gasoline & middle distillates) exceeded the $5,000 small purchaser limitation, and because Century did not demonstrate injury with respect to these purchases. The total refund approved in this Decision is $27,815, representing $24,594 in principal and $3,221 in interest.

Marathon Petroleum Co./Research Fuels, Inc. 1/14/88; RF250-2738

The DOE issued a Decision and Order granting in part an Application for Refund filed by Research Fuels, Inc. (RFI) in the Marathon refund proceeding. RFI requested a refund based upon a given volume of motor gasoline, and elected to receive a refund based on the medium range injury presumption of 35 percent. The DOE granted RFI a refund based on its direct and indirect purchases of 138,854,463 gallons of Marathon motor gasoline. The refund granted is $23,069.04, representing $20,311.19 in principal and $2,757.85 in interest. With respect to the portion of the RFI application based on volumes of fuel not purchased by RFI, the DOE held that these volumes could not form the basis for a refund for pricing violations. In this regard, the DOE noted that this aspect of RFI's application related to another pending Application for Refund involving the claim that Marathon sold RFI's allocation entitlement to Oasis Petroleum Corp. (OASIS). The DOE determined that RFI's contentions concerning those volumes should be considered in connection with that Application and the application filed by Oasis.

Marathon Petroleum Company/Webster Service Stations, Inc., 1/15/88; RF250-2659

The DOE issues a Decision and Order concerning a refund previously granted to Webster Service Stations, Inc. *See Marathon Petroleum Co./Webster* Service Stations, Inc., 15 DOE ¶ 85,015 (1986). After that refund was paid, the DOE learned that Webster is a wholly-owned subsidiary of Marathon. In view of this fact, the DOE determined that Webster was ineligible to receive any portion of the Marathon deposit escrow account, and that its refund must be rescinded.

Mid-America Dairymen, Inc., 1/11/88; RF272-5

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Mid-America Dairymen, Inc. The applicant requested that the DOE reverse a prior Decision dismissing Mid-America's Application for Refund in the crude oil Subpart V proceeding. In considering Mid-America's motion, the DOE found that Roberts Dairy Company, an affiliate of Mid-America, had filed an Application for Refund from the Surface Transporters (ST) escrow. That application included a properly executed ST Waiver in which the Roberts waived both its rights and the rights of any of its affiliates to seek refunds in any crude oil Subpart V proceeding. The DOE determined that Mid-America was bound by its affiliate's waiver.

Mobil Oil Corp./Austin Paving Company, et al., 1/13/88; RF225-3262, et al.

The DOE issued a Decision and Order granting 38 Applications for Refund filed by end-users in the Mobil Oil Corporation Special Refund Proceeding. Each applicant documented its purchases of regulated petroleum products from Mobil during the Consent Order period. Accordingly to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil Consent Order fund based on the volume of its purchases times either: (i) 100 percent of the volumetric refund amount if it purchased product directly from Mobil or (ii) times 60 percent of the volumetric refund amount if it purchased motor gasoline indirectly from Mobil. End-users who indirectly purchased Mobil products other than motor gasoline received the full volumetric refund amount. The refunds approved in the Decision totaled $784,135 ($632,977 principal plus $151,158 interest).

Mobil Oil Corporation/Bird Oil Company, Inc., 1/15/88; RF225-9222, RF225-9223, RF225-9224, RF235-9225

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Bird Oil Company, Inc. (Bird), a reseller of Mobil refined petroleum products. In its refund application, Bird elected to submit documentation that it was injured by Mobil's pricing practices, rather than to rely on the presumptions set forth in the Mobil Implementation Order. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the motor gasoline data submitted by Bird, the DOE determined that the Mobil motor gasoline purchased by the firm during the Consent Order period was purchased at prices consistently higher than the market average price. Therefore, the DOE concluded that Bird was eligible to receive the full volumetric refund amount for its purchases of Mobil motor gasoline. However, because the firm received a refund greater than $5,000 for its purchases of motor gasoline, the DOE determined that Bird was ineligible for a refund based on its purchases of Mobil middle distillates. The total refund granted to Bird was $7,526, representing $6,075 in principal plus $1,451 in interest.

Mobil Oil Corp./Dow Chemical, U.S.A., et al., 1/13/88; RF225-4494, et al.

The DOE issued a Decision and Order granting Applications for Refund from the Mobil Oil Corporation Consent Order fund filed by Dow Chemical U.S.A., the Southern Pacific Transportation Company, and the St. Louis Southwestern Railway Company, all end-users of Mobil refined petroleum products during the Mobil Consent Order period. Each applicant presented evidence that it purchased refined petroleum products directly from Mobil during the Consent Order period. Accordingly to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil

Consent Order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. The refunds granted in this Decision totaled $20,587 ($16,618 principal plus $3,969 interest).

Mobil Oil Corporation/Eggleston Oil Company, 1/13/88; RF225-9342, RF225-9342 and RF225-9343

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Eggleston Oil Company (Eggleston), a reseller of Mobil refined petroleum products. In its refund application, Eggleston elected to submit documentation that it was injured by Mobil's pricing practices, rather than to rely on the presumptions set forth in the Mobile Implementation Order. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the data submitted by Eggleston, the DOE determined that the firm purchased the vast majority of its motor gasoline at prices higher than the average market prices. Therefore, the DOE concluded that Eggleston was eligible to receive the full volumetric refund amount for its purchases of Mobil motor gasoline as well as for its purchases of middle distillates and lubricants. The total refund granted to Eggleston was $1,527, representing $1,233 in principal plus $294 in interest.

Mobil Oil Corp./J.J. Wright Oldsmobile, Inc., 1/15/88; RF225-6798, RF225-10930

The DOE issued a Decision and Order granting J.J. Wright Oldsmobile, Inc. (J.J. Wright), a refund from the Mobil Oil Corporation Consent Order fund. J.J. Wright applied as an end-user of 163,789 gallons of motor gasoline and a reseller of 3,408 gallons of lubricants and greases which it purchased directly from Mobil during the Consent Order period. Under the presumptions established in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), end-users who were directly supplied by Mobil are entitled to a refund equivalent to the amount of their documented purchase volumes times 100 percent of their per gallon volumetric refund amount. Resellers who purchased other than motor gasoline from Mobil and whose total claim is $5,000 or less are also eligible for a refund equivalent to the amount of their documented purchase volumes times 100 percent of their volumetric refund amount, without any further showing of injury. The total amount of J.J. Wright's refund approved in this Decision and Order is $83 ($67 principal plus $16 interest).

Mobil Oil Corporation/Volunteer State Oil Company, 1/13/88; RF225-9231, RF225-9232, RF225-9233 and RF225-9234

The DOE issued a Decision and Order granting an Application for refund from the Mobil Oil Corporation escrow account filed by Volunteer State Oil Company (Volunteer), a reseller of Mobil refined petroleum products. In its refund application, Volunteer elected to submit documentation that it was injured by Mobil's pricing practices, rather than to rely on the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Applying a competitive disadvantage analysis to the motor gasoline data submitted by Volunteer, the DOE determined that the firm purchased 9,348,770 gallons of Mobil motor gasoline at prices higher than the market average price and 9,572,456 gallons of mobil motor gasoline at prices lower than the market average price. Therefore, the DOE concluded that Volunteer was eligible to receive the full volumetric refund amount for the gallons of Mobil motor gasoline it purchased at above the market average price as well as for its purchases of Mobil middle distillates and lubricants. The total refund granted to Volunteer was $5,253, representing $4,241 in principal plus $1,012 in interest.

Sigmor Corporation/Valero Refining and Marketing Co., L.H. McCoy Enterprises, 1/11/88; RF242-21, RF242-23

The DOE issued a Decision and Order concerning Applications for Refund filed by Valero Refining and Marketing Co. (Valero) and L.H. McCoy enterprises (L.H. McCoy) in accordance with the procedures outlined in *Sigmor Corporation*, 14 DOE ¶ 85,079 (1986). Valero elected to limit its refund to $5,000, while L.H. McCoy claimed a refund below $5,000. Therefore, both applicants were presumed to have been injured by Sigmor's alleged overcharges. After reviewing the applications and supporting documentation, the DOE determined that Valero be granted a refund totaling $6,381 ($5,000 in principal plus $1,381 in interest) and that L.H. McCoy be granted a refund totaling $2,142 ($1,678 in principal plus $464 in interest).

Snokist Growers, 1/13/88; RF272-714

The DOE issued a Decision and Order, granting Snokist Growers (Snokist) Application for Refund from the DOE's Subpart V crude oil refund proceeding. Snokist is a farmers cooperative. Snokist claimed a refund based on its purchases of 2,491,589 gallons of petroleum products, a portion of which was resold to its member farmers. OHA has regarded refund applications filed by cooperatives as claims filed on behalf of cooperative members. Thus, to the extent that cooperative members were end-users of petroleum products, OHA has applied the end-user presumption of injury to claims filed by cooperatives. Based on this policy, OHA granted Snokist's refund request, with the condition that Snokist pass through the refund to its members. The total amount of refund approved in this Decision and Order was $498.

Standard Oil Co. (Indiana)/Yankton Sioux Tribe et al., 1/14/88; RQ251-320 et al.

The DOE issued a Decision approving second-stage refund plans filed by the Yankton, Rosebud, Lower Brule, and Sisseton-Wahpeton Sioux Tribes in the Standard Oil Company (Indiana) (Amoco I and Amoco II) second-stage refund proceedings. In their applications, the Tribes proposed to spend their allocable shares of Amoco I and/or Amoco II monies for a number of energy assistance and energy conservation projects, including a Low Income Home Energy Assistance Programs and a low-income transportation program. The DOE found that each of the tribes' proposals was restitutionary in nature, and therefore should be approved. Accordingly, the DOE granted $2,929 to the Yankton Sioux Tribe, $3,280 to the Rosebud Sioux Tribe, $888 to the Lower Brule Sioux Tribe, and $10,081 to the Sisseton-Wahpeton Sioux Tribe from the Standard Oil Co. (Indiana) escrow account.

Suburban Propane Gas Corporation/Cyril Johnson Mills et al., 1/15/88; RF199-2 et al.

The DOE issued a Decision granting 15 Applications for Refund from the Suburban Propane Gas Corporation escrow account which were filed by retailers and end-users of Suburban Propane, Butane, and Natural Gasoline during the period November 1, 1973 through October 31, 1978. Each applicant elected to apply for a refund based upon the presumptions set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987). The DOE granted refunds totalling $12,937 ($11,608 principal plus $1,329 interest).

Vickers Energy Corp./Michigan, 1/12/88; RQ1-428

The DOE issued a Supplemental Order, modifying a previous Order which approved a second-stage refund application filed by the State of Michigan. The total payment specified in OHA's original Decision inadvertently

included funds from the Vickers Energy Corp. escrow account which cannot be released to the State due to pending litigation. The Supplemental Order specified that the Vickers funds be excluded from the total payment to Michigan at this time. When and if the DOE is successful in the litigation, the Vickers funds will be promptly released to the State.

DISMISSALS

[The following submissions were dismissed]

Name	Case No.
Power Transportation Co.	RF225-4177
Simeone Corp.	RF225-4759
	RF225-4760
Tree Top, Inc.	RF225-8549

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 26, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals

[FR Doc. 88-4779 Filed 3-3-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $2,700, plus accrued interest, obtained through a Consent Order between DOE and Alemany Chevron Service Center, a retailer of motor gasoline located in San Francisco, CA and $6,199.19, plus accrued interest, obtained through a Settlement Agreement with Lee Garrett Chevron, a retailer of motor gasoline located in Whittier, CA. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed on or before April 4, 1988 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to either: case number KEF-0023 for Alemany Chevron Service Center or case number KEF-0040 for Lee Garrett Chevron.

FOR FURTHER INFORMATION CONTACT: Matthew Paul, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $2,700, plus accrued interest, obtained by the DOE through a Consent Order with Alemany Chevron Service Center (Alemany) and $6,199.19, plus accrued interest, obtained through a Settlement Agreement with Lee Garrett Chevron (Garrett). The funds were provided to the DOE by Alemany and Garrett in order to settle all claims and disputes between the firms and the DOE regarding the firms' adherence to federal price regulations for motor gasoline during the period August 1, 1979, through January 31, 1979 for Alemany and August 2, 1979, through August 26, 1980 for Garrett (the audit periods).

The Office of Hearings and Appeals proposes that the funds should be distributed to purchasers of the firms' motor gasoline during the audit periods. In order to obtain a portion of the funds remitted by Alemany or Garrett, a claimant must submit a schedule of its monthly purchases from Alemany or Garrett. Claimants will be allowed to file an Application for Refund in each proceeding; however, claimants who do so must submit purchase schedules from both Alemany and Garrett. Because the firms sold only to end users, applicants will be presumed to have been injured by their purchases. Any residual funds will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99-509, Title III. *See* 51 FR 43964 (December 5, 1986). Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 23, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

February 23, 1988.

Names of Firm: Alemany Chevron Service Center, Lee Garrett Chevron

Dates of Filing: March 28, 1986, June 3, 1986

Case Numbers: KEF-0023, KEF-0040

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On March 28, 1986, and June 3, 1986, ERA filed Petitions for the Implementation of Special Refund Procedures in connection with funds received from Alemany Chevron Service Center (Alemany) and Lee Garrett Chevron (Garrett).

I. Background

Both firms were "retailers" of motor gasoline as that term was defined in 10 CFR 212.31. Alemany was located in San Francisco, California and Garrett in Whittier, California. DOE audits of the firms' records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. On the basis of an audit of Alemany's operations, the ERA alleged that between August 1, 1979, and January 30, 1980, the firm committed violations of the DOE's pricing regulations with respect to its sales of motor gasoline. As a result of its audit of Garrett, the ERA alleged similar violations for the period August 2, 1979 to August 26, 1980. The period of time

covered by these audits shall be referred to as the "audit periods". In order to settle all claims and disputes between the firms and the DOE regarding the firms' compliance with the Mandatory Petroleum Price and Allocation Regulations during the audit periods, the firms and the DOE entered into two settlement agreements, one on January 11, 1985 and the other on October 1, 1985. Alemany and the DOE entered into a Consent Order which refers to ERA's allegations of regulatory violations, but states that Alemany does not admit committing any such infractions.

Under the terms of the Consent Order, Alemany was required to deposit $2,700 into an interest-bearing escrow account for ultimate distribution by the DOE. These consent order monies have been paid in full.

With regard to Garrett, ERA issued a Proposed Remedial Order (PRO) on January 23, 1981. The OHA issued the PRO as a final Remedial Order (RO) on June 15, 1983. The RO required Garrett to remit $8,550.35, plus interest, to the DOE. Garrett did not remit the funds, and subsequently was offered participation in the ERA Administrator's September 1981 Gasoline Retailer Settlement Program. In order to participate in the program, Garrett would be required to remit $4,275.17, plus interest, and a civil penalty of $128.26. Garrett originally refused this offer. The offer, however, was extended again on September 26, 1985, and Garrett accepted at that time. Final payment of these monies has been receive.[1] This Decision concerns the distribution of the funds received from Alemany and Garrett. Comments are solicited on these proposed procedures.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged regulatory violations, or to ascertain readily the level of injury sustained by such persons. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

[1] Garrett remitted a total of $6,199.19. As of January 31, 1988, the Garrett settlement funds had accrued $912.88 in interest.

As in other Subpart V cases, we will use the funds currently in escrow to provide refunds to claimants who demonstrate that they were injured by the firms' alleged or actual regulatory violations during the audit periods. Residual funds in the escrow accounts will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See* 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts

In order to determine the potential refund amounts for applicants in this procedure, we propose to adopt a volumetric refund presumption. The volumetric refund presumption assumes that alleged or actual overcharges were spread equally over all gallons of motor gasoline that Alemany and Garrett, respectively, sold during the audit periods.[2]

Under the volumetric method, a claimant that adequately demonstrates injury will be eligible to receive a refund equal to the number of gallons of motor gasoline that it purchased from the firms during the audit periods times a specific volumetric factor for each firm. The volumetric factor is the average per gallon refund and in this case equals $0.00540 per gallon for purchases from Alemany and $0.01237 per gallon for purchases from Garrett.[3] In addition, successful claimants will receive proportionate shares of the interest that has accrued on the escrow accounts.

B. End-User Presumption of Injury

The assignment of potential refund amounts to claimants is only the first step in the distribution process. We must also determine whether these claimants were forced to absorb the alleged overcharges. As we have done in many prior refund cases, we propose to adopt a presumption that end users were injured by the firms' alleged or actual pricing violations. This presumption is used to permit claimants to participate in the refund process without incurring incordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible. Because both firms were retailers of motor gasoline, it is not necessary for us to adopt other injury presumptions, such as reseller and retailer small claims presumptions, which we have used in past proceeding.

As noted above, we presume that end users of Alemany and Garrett's motor gasoline were injured by the alleged or actual overcharges. It is likely that many pruchasers of motor gasoline from these firms were individual motorists who were forced to absorb the alleged or actual overcharges involved. Moreover, the firms' other customers, unlike regulated firms in the petroleum industry, generally were not subject to price controls during the audit periods. They were therfore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. An analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the pertroleum price regulations would therefore be beyond the scope of a special refund proceeding. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. Consequently, end users of the firms' motor gasoline will only have to document their purchase volumes from the firms to demonstrate injury.

III. Applications for Refund

Applications for Refund should not be filed at this time. Before implementing the procedures outlined in this Proposed Decision, we intend to publicize it in order to solicit comments from any interested parties. All comments must be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Decision in the **Federal Register.**

Through the above procedures, we believe we will be able to distribute the funds collected as equitably and efficiently as possible. The information each applicant must provide, if these proposed procedures are adopted, is summarized below.

(1) An applicant must make a conspicuous reference to the firm from whose escrow funds it is seeking a refund—either "Alemany: Case No. KEE–0023" or "Garrett: Case No. KEE–0040". An applicant must also provide its present firm name and address, and its firm name and address during the

[2] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation on the basis of a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g.*, Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

[3] These figures are computed by dividing the monies received from the firms by the gallons of motor gasoline sold by the firms during the audit periods. Alemany remitted $2,700 and sold an estimated volume of 500,094 gallons. Garrett remitted $6,199.19 and sold an estimated volume of 501,238 gallons.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g.*, Uban Oil Co., 9 DOE at 85,225. *See also* 10 CFR 205.286(b).

refund period. Individuals applying for refunds should provide their own name and address.

(2) An applicant must provide the name, title, and telephone number of a person who may be contacted for additional information concerning the application.

(3) An applicant must submit a monthly schedule of the number of gallons of motor gasoline that it purchased from the firm from whose escrow funds it is seeking a refund (Alemany or Garrett) during the audit periods.[4]

(4) An applicant must indicate if it was or is in any way affiliated with the firm from whose escrow funds it is seeking a refund (Alemany or Garrett). If so, the applicant must provide an explanation of the nature of its affiliation.

(5) If the applicant's firm has changed ownership since the audit period, the applicant must provide a detailed explanation of the change in ownership as well as the names and addresses of all provious and subsequent owners.

(6) An applicant must indicate whether it or a related firm had filed any other Application for Refund in the proceeding involving the firm from whose escrow funds (Alemany or Garrett) it is seeking a refund. The applicant must also indicate whether it has authorized any other individual(s) to file an application for Refund on the applicant's behalf in that proceeding (Alemany or Garrett).

(7) Each applicant must indicate whether it is or has been involved in any DOE enforcement proceedings or provate actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

(8) An applicant must include the following statement signed by the applicant, a responsible official of the firm or authorized person claiming a refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001."

As previously noted, residual funds will be distributed in accordance with the provisions of PODRA. As we stated above, Applications for Refund should *not* be filed at this time. We will accept comments on the proposed refund procedures. Comments must be filed in duplicate and sent to: Alemany/Garrett Proceeding, Case Nos. KEE–0023, KEE–0040, Office of Hearings and Appeals, Department of Energy, HG–1, 1000 Independence Avenue SW., Washington, DC 20585

It is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by Alemany Chevron Service Center pursuant to the Consent Order executed on January 11, 1985 and by Lee Garrett Chevron pursuant to a settlement agreement disposing of the June 15, 1983 Remedical Order executed on September 26, 1985 will be distributed in accordance with the foregoing decision.

[FR Doc. 88–4710 Filed 3–3–88; 8:45 am]

BILLING CODE 6450–01–M

[4] Since we will not process claims for less than $15 in principal, *see supra* note 2, an applicant must have purchased at least 2,688 gallons of motor gasoline from Alemany or 1,173 gallons of motor gasoline form Garrett during the audit periods in order to receive a refund.

Western Area Power Administration

Availability of the Final Environmental Impact Statement for the California-Oregon Transmission Project and Los Banos-Gates Transmission Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of Availability for Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), Western Area Power Administration (Western), has released a final environmental impact statement (EIS) for the proposed California-Oregon Transmission Project and Los Banos-Gates Transmission Project (COTP) (DOE/EIS–0128). The EIS includes an environmental report on the Pacific Northwest (PNW) Reinforcement Project. The EIS was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4335; Council on Environmental Quality guidelines, 40 CFR Parts 1500 through 1508; and DOE guidelines of compliance with NEPA, 52 FR 47662, December 15, 1987. The EIS was jointly prepared with the Transmission Agency of Northern California (TANC), who issued the document as an environmental impact report (EIR) to fulfill the requirements of the California Environmental Quality Act. The EIR will be used by the investor-owned utilities in California, along with other supporting information, as part of their application to the California Public Utilities Commission.

FOR FURTHER INFORMATION CONTACT: For additional information on the EIS contact: Ms. Nancy Weintraub, Environmental Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, (916) 978–4460.

SUPPLEMENTARY INFORMATION: With the enactment of the Energy and Water Development Appropriation Act of 1985 (Pub. L. 98–360, 98 Stat. 416 (1985)), Congress directed the Secretary of Energy, through Western, to proceed immediately with planning and environmental activities related to a new 500-kilovolt (kV) alternating current (AC) transmission line between the Pacific Northwest and California. Western has prepared an EIS that addresses the potential environmental impacts associated with the construction, operation, and maintenance of a third 500-kV Intertie transmission line and supporting facilities in California, Oregon, and Washington. The EIS includes electrical transmission projects that are proposed by public and privately-owned utilities and Western that would expand and reinforce the Pacific Northwest-Pacific Southwest Intertie. The projects have multiple purposes and would: (1) Provide a third 500-kV AC transmission path between southern Oregon and central California (the California-Oregon Transmission Project); (2) complete a third 500-kV AC transmission path in the San Joaquin Valley of California (the Los Banos-Gates Transmission Project); and (3) reinforce the existing 500-kV AC transmission system facilities in Oregon and southern Washington (the Pacific Northwest Reinforcement Project).

California-Oregon Transmission Project: Western, TANC, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company, Southern California Edison Company, California Department of Water Resources, six southern California cities, and six additional public entities, propose to build an approximately 340-mile long, 500-kV AC transmission line from southern Oregon to the Tesla Substation in central California. The COTP proposed action would include a new substation near Malin, Oregon; 140 miles of new 500-kV transmission line from southern Oregon to a new substation (Olinda) near Redding, California; approximately 170 miles of 500-kV transmission line that would

consist of reconstructing an existing double-circuit 230-kV transmission line owned by Western from the new Olinda Substation to the Sacramento River Delta area and approximately 20 miles of new 500-kV line from the Sacramento River to the existing Tracy Substation; a new series compensation station (Maxwell) near Maxwell, California; expansion of the Tracy Substation; and approximately 6 miles of new 500-kV transmission line between the Tracy Substation and the existing Tesla Substation. Alternative locations for the transmission line and supporting facilities are analyzed, as are the no-action alternative and other alternatives to the project.

Los Banos-Gates Transmission Project: PG&E proposes to build an approximately 84-mile long, 500-kV transmission line in the foothills along the western side of the San Joaquin Valley between the existing Los Banos and Gates Substations. The Los Banos-Gates Transmission Project includes 84 miles of new 500-kV AC transmission line; realignment of the existing Los Banos-Midway No. 2 500-kV Transmission Line into Gates Substation; modification of the Los Banos and Gates Substations to accommodate new equipment and line connections; installation of new electrical equipment at several existing substations; and reconductoring of portions of the Gates-Arco-Midway 230-kV Transmission Line. Alternative routes for the transmission line are analyzed in the EIS, as are the no-action alternative and other alternatives to the project.

Presently, the need for and timing of the Los Banos-Gates Project is uncertain. If the project is not built or its construction is deferred, it may be necessary to make minor modifications to the existing transmission system south of the Tesla Substation in order to accommodate the increased power transfer demands. These modifications are discussed in the final EIS.

Pacific Northwest Reinforcement Project: The Bonneville Power Administration (BPA), Pacific Power and Light Company, and Portland General Electric Company propose to build new and modify existing transmission lines and supporting facilities in southern Washington and Oregon. Approximately 8 miles of new 500-kV transmission lines are proposed. Modifications may be made to 13 or more existing substations. One new substation (Marcola) may be constructed between the existing Marion Substation and Alvey Substation. Impacts are assessed and mitigation measures considered.

Purpose and Need: The purpose of the proposed action is to expand the bidirectional capability of the Pacific Northwest-Pacific Southwest Intertie transmission system and to help serve California's need for economical power, the Pacific Northwest's desire to sell surplus power, and the need for maintaining and increasing the reliability of the existing transmission system. The COTP will add approximately 1,600 megawatts (MW) of additional transfer capability between the Pacific Northwest and California. The three projects would add to and strengthen the existing high-voltage transmission links between California and the Pacific Northwest. They would provide for greater access to Northwest power surpluses, facilities more efficient use of regional power resources, provide greater resource diversity, and enhance system reliability.

Alternatives to the Proposed Actions: The bidirectional power transactions that would be provided by the projects represent one of several approaches for meeting a portion of California's and the PNW's present and future power needs. Several alternatives were examined before the proposed actions were fully defined.

Nontransmission alternatives considered include increased power purchases from the Southwest, increased power purchases from out-of-state coal-fired power plants, increased dependence on other in-state generating technologies, and increased reliance on conservation and load management. Transmission alternatives evaluated include upgrading and modifying existing AC transmission lines, constructing new AC lines, and constructing direct current lines.

Related Projects: BPA issued a draft Intertie Development and Use EIS (IDU EIS) in October 1986, on a proposed Intertie Access Policy that would address use of the existing and new Intertie capacity. The draft IDU EIS examines the potential environmental impacts associated with the proposed increases in Intertie capacity and use. Effects from changes in energy resources operations are analyzed in the context of alternative Intertie access policy options and are evaluated in terms of impacts on air and water quality, fish, wildlife, recreational and nonrenewable (fossil fuel) resources, and electric power costs. The analysis includes the PNW, California, the Inland Southwest, and British Columbia and covers several scenarios including the Third AC Intertie/COTP. While the COTP EIS addresses the potential impacts from the construction, operation, and maintenance of the three proposed construction projects, the IDU EIS addresses the potential impacts from the possible changes in operations of energy resource facilities that may result from the projects or other Intertie expansion proposals. In November 1987, BPA issued the Hydro Operations Issue Paper that discussed new information and analyses pertaining to environmental impacts associated with increasing the capacity of the Intertie. The IDU EIS and Hydro Operations Issue Paper discussions of impacts related to the Third AC Intertie/COTP proposal are incorporated into the COTP EIS by reference and are discussed in the revised summary of the EIS. Western will consider the information in the draft IDU EIS, the Hydro Operations Paper, and the final IDU EIS before issuing a record of decision on the COTP. BPA plans to issue the final IDU EIS in early Aprils 1988. Western expects to issue the record of decision for the COTP in May 1988.

Cooperating Federal Agencies: The Federal cooperating agencies on the COTP are BPA; Department of Agriculture, Forest Service; Department of the Interior, Bureau of Land Management; and Department of the Army, Corps of Engineers.

Availability of Copies of the EIS

Copies of the EIS have been distributed to interested Federal, State, and local agencies in California and Oregon; and to libraries, local planning offices, and civic institutions in potentially affected areas. A complete list of all individuals and agencies receiving a copy of the EIS can be obtained from the Environmental Coordinator at the address given below.

Copies of the document are available for public review at Western's offices in Sacramento, California (1825 Bell Street); and Golden, Colorado (1627 Cole Blvd, Building 18, 3rd floor). A limited number of copies are available on request for individuals or organizations who are potentially directly affected by the proposed action. Requests for copies should be sent to the Environmental Coordinator, California-Oregon Transmission Project, P.O. Box 660970, Sacramento, CA 95866.

Issued at Golden, Colorado, February 19, 1988.

William H. Clagett,

Administrator.

[FR Doc. 88-4780 Filed 3-3-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3337-5]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of waiver of Federal preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act to adopt and enforce amendments to its emission standards and test procedures for the certification of 1988 and later model year heavy-duty diesel-powered engines and vehicles. California amended its exhaust emissions standards and test procedures to more closely align them with the corresponding Federal standards and procedures. Specifically, California established new particulate matter (PM) and oxides of nitrogen (NO_x) standards and incorporated in significant part the Federal transient cycle test procedures. California also established a 0.10 grams per brake horsepower-hour (g/bhp-hr) PM standard for engines used in urban buses for the 1991–1993 model years. PM averaging will be permitted for 1991–1995 model year heavy-duty diesel engines, excluding urban buses. Federal smoke opacity standards and test procedures were incorporated.

ADDRESSES: A copy of the above standards, procedures, and other amendments, the decision document containing an explanation of the Administrator's determination and the record of those documents used in arriving at this decision, are available for public inspection during normal working hours (8:00 a.m. to 3:00 p.m.) at the U.S. Environmental Protection Agency, Central Docket Section (Docket EN–86–18), Room 4, South Conference Center, 401 M Street, SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Leila Holmes Cook, as noted below.

DATES: Any objections to the findings in this notice must be filed by April 4, 1988. Otherwise, at the publication of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing in a subsequent **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Leila Holmes Cook, Attorney/Advisor, Manufacturers Operations Division (EN–340–F), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 382–2485.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(b), for its amendments which provide for the certification of heavy-duty diesel-powered engines and vehicles. The amendments adopted by the California Air Resources Board (CARB) are to its heavy-duty diesel-powered exhaust emissions standards and test procedures and more closely align the California standards and procedures with the corresponding Federal requirements (*see* 50 FR 10606 March 15, 1985).

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs the State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

As previous decisions granting waivers of Federal preemption have explained, State standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology, given the cost of compliance within the time period, or if the Federal and State test procedures impose inconsistent certification requirements.

CARB determined that these amended standards and accompanying enforcement procedures do not cause California's emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards. No manufacturers presented evidence that California arbitrarily and capriciously reached this determination. Since California's standards and procedures conform in significant part with, or are more stringent than the Federal standards and procedures, I cannot find California's determination to be arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emissions standards and test procedures are technologically feasible and present no inconsistency with Federal certification requirements and are, therefore, consistent with section 202(a) of the Act. No party submitted data or other information to EPA suggesting that the standards are not technologically feasible within the available lead time, considering costs. Since California's amendments generally incorporate the Federal transient cycle test procedures, California's amendments do not present any issues regarding inconsistent certification procedures. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the state who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this waiver determination, since it is not a rule.

Finally, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: February 26, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–4735 Filed 3–3–88; 8:45 am]

BILLING CODE 6560–50–M

[AMS-FRL-3337-6]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of waiver of Federal preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act to adopt and enforce amendments to its emission standards and test procedures for the certification of 1987 and later model year heavy-duty gasoline-powered engines and vehicles. California amended its exhaust emissions standards and test procedures to more closely align them with the corresponding Federal standards and procedures. California also extended the useful-life period for emissions compliance, engine durability and recall to the Federal full-life distance of 110,000 miles.

ADDRESSES: A copy of the above standards, procedures, and other amendments, the decision document containing an explanation of the Administrator's determination and the record of those documents used in arriving at this decision are available for public inspection during normal working hours (8:00 a.m. to 3:00 p.m.) at the U.S. Environmental Protection Agency, Central Docket Section (Docket En–86–18), Room 4, South Conference Center, 401 M Street, SW., Washington, DC. 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Joan S. Baxter, as noted below.

FOR FURTHER INFORMATION CONTACT: Joan S. Baxter, Attorney/Advisor, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 382–2522.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(b), for its amendments which provide for the certification of heavy-duty gasoline-powered vehicles and engines. The amendments adopted by the California Air Resources Board (CARB) are to its Heavy-duty Gasoline-powered Exhaust Emissions Standards and Test Procedures and include minor amendments to its Tune-Up Label Specifications and Emission Related Defect Reporting Procedures. The definition of the useful-life period for emissions compliance, engine durability and recall have also been extended to the Federal full-life distance of 110,000 miles. The amendments tend to align California's standards and procedrues more closely with the corresponding Federal requirements.

Section 209(b) of the Acts provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs the State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these amended standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No manufacturers presented evidence that California arbitrarily and capriciously reached this determination. Since California's standards and procedures conform in significant part with the Federal standards and procedures, I cannot find California's determination to be arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emissions standards and test procedures are technologically feasible and present no inconsistency with Federal certification requirements and are, therefore, consistent with section 202(a) of the Act. No commenter submitted data or other information to satisfy its burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. In addition, since California's certification procedures now parallel the Federal certification procedures, California's amendments do not present any issues regarding inconsistent certification procedures. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this waiver determination, since it is not a rule.

Finally, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: February 26, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–4736 Filed 3–3–88; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3337-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 15, 1988 through February 19, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–AFS–K61090–CA, Rating EC2, Gallatin Marina (Formerly Eagle Lake Marina) Future Development Policy, Implementation, 404 Permit,

Lassen National Forest, Lassen County, CA.

Summary: EPA expressed environmental concerns on the project's potential to impact Eagle Lake's water quality and beneficial uses. EPA asks that the final EIS discuss current sewer capacity and potential impacts to water quality from increased sewer demand.

ERP No. D-FHW-D40230-DE, Rating EC2, 12th Street Improvement Project, I-495/12th Street Interchange to the Central Business District of Wilmington at Walnut Street, Funding and 404 Permit, New Castle County, DE.

Summary: EPA requests that this document presents more detailed information with regard to air and traffic analyses, historic resources and floodplain impacts. Potential short term impacts to ground and surface water also exist.

ERP No. D-FHW-L40158-OR, Rating EC2, OR-42/Coos Bay/Roseburg Highway Widening and Realignment, Cedar Point Road to Main Street, Funding and 404 Permit, City of Coquille, Coos County, OR.

Summary: EPA's primary environmental concerns are the adverse effects of alternative B on 12.2 acres of wetland and the socioeconomic and noise impacts associated with alternative A. Additional information and clarification are needed regarding hazardous materials, geotechnical information (including he possibility of a new alignment parallel to the railroad), floodplain findings and mitigation for wetland, noise, and secondary impacts.

Final EISs

ERP No. F-AFH-L24003-ID, Adoption—City of Post Falls Wastewater Treatment Facilities, Sewage Treatment Plant Improvements and Interceptor and Collection Sewers Extension, Funding, Kootenai County, ID.

Summary: EPA has no objections to the project as proposed.

ERP No. FS-COE-G36048-TX, Lake Wichita-Holliday Creek Flood Control Project Mc Grath Creek Flood Control Plan, Implementation, Wichita County, TX.

Summary: EPA comments issued on the draft supplemental EIS were adequately responded to in this document. EPA has not identified any new issues of concern with regard to the proposedm action.

ERP No. F-DOE-A22106-WA, Hanford Site Defense High-Level Transuranic and Tank Wastes Disposal, Implementation, Richland County, WA.

Summary: EPA supports the preferred alternative including the construction of the related processing plants. EPA offered a number of comments that relate to the program or to other activities at Hanford.

ERP No. F-FHW-F40234-WI, North Corridor Arterial and Chippewa River Crossing, Construction, US 12 to US 53, Funding and 404 Permit, Eau Claire County, WI.

Summary: EPA feels the preferred alignment discussed in this document is acceptable as long as the ROD includes commitments to provide mitigation for wetlands impacts and to install noise barriers for severly noise impacted areas.

Dated: March 1, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-4699 Filed 3-3-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3337-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed February 22, 1988 Through February 26, 1988 Pursuant to 40 CFR 1506.9

EIS No. 880049, Draft, AFS, MT, Deerlodge National Forest, Protection of Recreation Sites from Mountain Pine Beetle Attacks, Implementation, Homestake, Delmoe Lake, Elder Creek and Thompson Park Recreational Areas, Jefferson and Silver Bow Counties, Due: April 18, 1988, Contact: Merrill S. Davis, (406) 494-2147.

EIS No. 880050, Draft, COE, WY, Sandstone Dam and Reservoir Construction, Municipal, Agricultural and Industrial Water Supply Project, 404 Permit, Savery Creek, Carbon County, WY, Due: April 18, 1988, Contact: Richard Gorton, (402) 211-4598.

EIS No. 880051, Draft, USA, ID, Orchard Training Area Facilities Development Project, Construction and Improvements, Implementation, Ada County, ID Due: April 18, 1988, Contact: Richard H. Brown, (208) 389-5286.

EIS No. 880052, Draft, FHW, WA, WA-20 Widening, Weeman Bridge to Winthrop, Funding and Possible 404 Permit, Okanogan County, WA, Due: April 18, 1988, Contact: P. C. Gregson, (206) 753-2120.

EIS No. 880053, Draft, AFS, ID, Wing Creek-Twentymile Geographic Display Area Management Plan, Implementation, Nezperce National Forest, Elk City and Clearwater Ranger Districts, Idaho County, ID, Due: April 18, 1988, Contact: Rodney E. Windell, (208) 983-1963.

EIS No. 880054, Draft, BOP, IL, East Peoria Federal Correctional Institution Complex, Construction and Operation, Tazewell County, IL, Due: April 20, 1988, Contact: William Patrick, (202) 724-3232.

EIS No. 880055, Final, AFS, VA, South Coeburn Field, Natural Gas Pipeline and Road Construction and Drilling Development, Approval, Jefferson National Forest, Clinch Ranger District, Wise and Scott Counties, VA, Due: April 4, 1988, Contact: Charles J. Saboites, (703) 328-2931.

EIS No. 880056, Draft, FHW, KY, Richmond Bypass Extension, US 25/421 North to US 25/421 South, Funding, Madison County, KY, Due: April 19, 1988, Contact: Robert Johnson, (502) 227-7321.

EIS No. 880057, Final, DOE, OR, WA, CA, Third 500 kV Intertie Transmission Path, Telsa Substation, California to Southern Oregon and Los Banos Substation and Pacific Northwest Facility Reinforcements, Construction, Operation and Maintenance, CA, OR and WA, Due: April 4, 1988, Contact: Rick A. Lind, (916) 924-3995.

EIS No. 880058, Final, AFS, CA, Sequoia National Forest, Land and Resource Management Plan, Implementation, Tulare, Kern and Fresno Counties, CA, Due: April 4, 1988, Contact: James A. Crates, (209) 784-1500.

Amended Notices

EIS No. 870405, Draft, AFS, Umatilla National Forest, Land and Resource Management Plan, Implementation, Baker, Grant, Morrow, Umatilla, Union, Wallowa and wheeler Counties, OR and Asotin, Columbia, Walla Walla and and Garfield Counties, WA, Due: March 28, 1988, Contact: Lyle Jensen, (503) 276-3811. Published FR 11-27-88—Review period extended.

EIS No. 870406, Draft, AFS, Fremont National Forest, Land and Resource Management Plan, Implementation, Lake and Klamath Counties, OR, Due: March 15, 1988, Contact: Orville Grossarth, (503) 946-2151. Published FR 11-13-87—Review period extended.

EIS No. 870438, Draft, AFS, Rogue River National Forest, Land and Resource Management Plan, Implementation, Jackson, Klamath, Josephine and Douglas Counties, CA and Siskiyou County, OR, Due: May 2, 1988, Contact: Steven Deitemeyer, (503)

776–3600. Published FR 12–18–87—Review period extended.
EIS No. 870446, Draft, AFS, Williamette National Forest, Land and Resource Management Plan, Implementation, Clackamas, Lane, Douglas, Jefferson, Linn and Marion Counties, OR, Due: May 16, 1988, Contact: Michael Kerrick, (503) 687–6521. Published FR 12–24–87—Review period extended.
EIS No. 870457, Draft, AFS, Winema National Forest, Land and Resource Management Plan, Implementation, Klamath County, OR, Due: April 15, 1987, Contact: J. L. Christensen, (503) 883–6714. Published FR 12–31–87—Review period extended.
EIS No. 880007, Draft, AFS, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR, Due: May 16, 1988, Contact: Robert Devlin, (503) 672–6601. Published FR 01–15–88—Review period extended.
EIS No. 880008, Draft, AFS, Mount Hood National Forest, Land and Resource Management Plan, Implementation, Clackamas, Hood River, Jefferson, Marion, Multnomah and Wasco Counties, OR, Due: May 31, 1988, Contact: William Geurds, (503) 666–0795. Published FR 01–22–88—Review period extended.

Dated: February 29, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–4698 Filed 3–3–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–00088; FRL–3338–1]

Acrylamide Health Risk Assessment: Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: This notice announces the availability of a draft Health Risk Assessment of Acrylamide. The Assessment reviews acrylamide's carcinogenic, genotoxic, reproductive, developmental, and neurotoxic effects. The manufacture and processing of acrylamide and its use as a soil grout to repair sewer lines are the principal exposure categories examined. Health risks associated with these exposures are presented. Comments on the Assessment are requested from the public .

DATE: Comments must be received by April 30, 1988.

ADDRESS: Submit written comments to: Richard Hefter, Existing Chemical Assessment Division (TS–778), Rm. E–403, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202–554–1404).

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances (OTS) has completed a comprehensive Health Risk Assessment of Acrylamide, and as part of its preparation for a review of the Assessment by EPA's Science Advisory Board (SAB) comments are being solicited from the public. Comments received will be summarized and made available to the SAB. The Assessment will be revised as necessary based on SAB and public review.

Copies of the Assessment can be obtained from the TSCA Assistance Office, see **FOR FURTHER INFORMATION CONTACT** above.

Dated: February 26, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88–4867 Filed 3–3–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

The National Board Plan for Carrying Out the Emergency Food and Shelter Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice sets out the text of the plan by which the National Board, authorized under Pub. L. 100–77, the Stewart B. McKinney Homeless Assistance Act, will conduct a program for distributing the sums of $10,000,000 and $113,929,000 to local private voluntary organizations and units of local government for the purpose of delivering emergency food and shelter to needy individuals in localities determined by the Board. The distribution formula for selecting these localities, and the award amount for each, follow the Plan text.

DATED: The award to the National Board for Pub. L. 100–71 was made August 4, 1987, while the award under Pub. L. 100–120 was made December 4, 1987.

FOR FURTHER INFORMATION CONTACT: Fran McCarthy, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3652.

Dennis Kwiatkowski, Chairman, National Board for Emergency Food and Shelter Program.

Preamble

Public Law 100–77 has been passed to continue the provision of emergency food and shelter services to needy individuals. The National Board would like to reiterate that grant awards from this program are designed to address emergency needs which have become evident in recent years. This program is not intended to address or correct structural poverty or long-standing problems. *Rather, this appropriation is for the purchase of food and shelter, to supplement and extend current available resources and not to substitute or reimburse ongoing programs and services.*

The National Board expects Local Boards to abide by the stated rules of this Plan and focus on the following concerns and principles mandated by the National Board.

- Serve *needy* individuals without discrimination but avoid duplication of benefits.
- Take the *MOST COST EFFECTIVE* approach in buying or leasing eligible items or services.
- Refuse to authorize the spending of funds on costs that differ from those allowed in the Plan, unless a request is made in *advance and approved* by the National Board.
- Restrict shelter rehabilitation to minimum work required to make a facility safe, secure and sanitary, or to bring the facility into compliance with local building codes. Avoid decorative or non-essential repairs and purchases as this is outside the intent of this program. The benefit of rehabilitation to provide service should be carefully weighed against the response to needs that exist at this time. In such cases, the National Board counsels that emphasis should be placed on currently existing needs.

The National Board is mandated, as are Local Boards and Local Recipient Organizations (LROs), to carry out the intent of the law. We must all ensure that as decisions are made, we not only question if a specific expenditure falls within the guidelines of eligible costs, but if making this expenditure would fulfill the *intent* of the program and the law.

The National Board has attempted to describe this program with some precision while not stifling local initiative. The result was to maximize the sense of enthusiasm and excitement that National Board members have for this tremendously successful public-

private partnership. Government and voluntary resources and skills can come together with care and timeliness to assist those in need.

The stewardship of Local Boards and services provided by LROs are proof, once again, of a caring society.

1.0 *Background and Introduction*

On March 24, 1983, the President signed the "Jobs Stimulus Bill", Public Law (PL) 98–8. That Bill provided $50 million for emergency food and shelter to the Federal Emergency Management Agency (FEMA) for allocation by a National Board between March 1983 and March 1984. The Board, chaired by FEMA, consisted of representatives of United Way of America; The Salvation Army; the National Council of Churches; Catholic Charities, USA; the Council of Jewish Federations, Inc.; and the American Red Cross. Congress designated these agencies because of their history of involvement in human service programs. This funding was provided to address emergency needs which had become evident in recent years.

Due to the continuing high need for emergency food and shelter services additional funds were appropriated in November 1983 (PL 98–151 and 98–181) for $40 million, August 1984 (PL 98–396) for $70 million, August 1985 (PL 99–88) for $20 million, November 1985 (PL 99–160) for $70 million, October 1986 (PL 99–500) for $70 million and in February 1987 (PL 100–6) for $45 million.

On July 22, 1987, PL 100–77 was signed by the President, authorizing the Emergency Food and Shelter National Board Program. The National Board has determined that funds appropriated for Phase VI will remain available for use until September 30, 1988.

1.1 *Purpose*

This Plan details the roles, responsibilities, and implementation procedures which shall be followed by the National Board, State Boards, Local Boards, and Local Recipient Organizations in the use of these funds. This program is nationwide in scope and will provide food and shelter assistance to needy individuals through local private voluntary organizations and units of government in areas designated by the National Board as being in highest need.

The intent of the Emergency Food and Shelter Program is to meet emergency needs by supplementing food and shelter assistance individuals might currently be receiving, as well as to assist those who are receiving no assistance. Individuals who received assistance under previous programs may again be recipients, providing they meet local eligibility requirements. *Services received under this program do not reduce or affect assistance any individual receives under any other federal, state, or local assistance program.* (PL 100–77, Sec.103b)

2.0 *Concept of Operations*

A. United Way of America will act as the National Board's Secretariat and fiscal agent and perform the necessary administrative duties that the Board must accomplish.

B. Funds distributed by the National Board will be to areas of greatest need. The formula for distribution is explained in Section 2.2B.

C. National Board funds will be distributed to Local Recipient Organizations (LROs) certified eligible by Local Boards. (Refer to Section 2.2D for Selection of Recipient Organizations.)

D. There is an administrative allowance limitation of two percent (2%) for local jurisdictions, one-half of one percent (.5%) for State Boards (when in operation) and one percent (1%) for the National Board.

Local administrative funds are intended for use by LROs and not for reimbursement of program or administrative costs any recipient's parent organization (its state or regional offices) might incur as a result of this additional funding. (See 2.3B, Eligibility of Costs.)

E. The National Board will notify qualifying jurisdictions of award eligibility within 60 days following allocation by FEMA. Unused or recaptured funds will be reallocated by the National Board.

F. All funds shall be paid out by LROs and spending shall cease by September 30, 1988. Local Boards have until October 30, 1988 to submit final reports and complete documentation of expenses *(for specified LROs only)* to the National Board.

Those LROs not required to *submit* documentation to the National Board still must satisfy the Local Board that all funds have been expended in accordance with National Board guidelines.

Note.—Local Boards and LROs are reminded that although documentation may not be required to be submitted with their report, they are subject to *random audits which may require the submission of documentation at a later date.*

2.1 *Rules and Responsibilities*

A. FEMA's Responsibilities

1. Constitute a National Board consisting of individuals affiliated with United Way of America; The Salvation Army; the National Council of Churches; Catholic Charities, USA; the Council of Jewish Federations, Inc.; the American Red Cross; and the Federal Emergency Management Agency.

2. Chair the National Board, using Parliamentary procedures and consensus by the National Board as the mode of operation.

3. Provide guidance, coordination and staff assistance to the National Board.

4. Award the grant to the National Board.

5. Assist the Secretariat in implementation of the National Board Program.

6. Conduct an audit of funds.

7. Initiate federal collection procedures to collect funds due when the efforts of the National Board have not been successful.

B. National Board Responsibilities

1. Identify areas of highest need for food and shelter assistance and determine amount to be distributed to each area.

2. Advise national organizations interested in food and shelter but not represented on the National Board to promote the availability of funds.

3. Develop the operational Plan for distributing funds and establishing criteria for expenditure of funds.

4. In jurisdictions that received previous awards, notify the former Local Board chair that additional funds are available. In areas newly selected for funding, notify the local United Way, American Red Cross, Salvation Army or local government official.

5. Provide copies of award notification materials to National Board member agencies and to heads of government in areas selected to receive funds.

6. Secure certification from Local Boards that funds will be used in accordance with established criteria.

7. Distribute funds to selected Local Recipient Organizations.

8. Hear appeals and grant waivers.

9. Reallocate unclaimed or unused funds.

10. Within 60 days following the grant award, submit to FEMA a plan to review documentation from Local Recipient Organizations.

11. Ensure that funds are properly accounted for, and that funds due are collected.

12. Submit end-of-program report on jurisdictions' use of funds to FEMA.

13. Transmit report to Congress on the year's program activities and final expenditures including an independent audit.

C. Responsibility of Former Local Board Chair, Local United Way/Red Cross/ Salvation Army (in newly funded areas) or State United Way/United Way in State Capital (for State Set-Aside Committees)

1. Constitute a Local/State Board. Where, in a local community, there are affiliates of the voluntary organizations represented on the National Board, they should be represented on the Local/ State Boards with the local/state head of government replacing FEMA. Local/ State Boards are encouraged to expand participation of other private non-profit organizations on the Local/State Board.

2. Convene initial meeting.

D. Responsibility of State Set-Aside Committee

1. Elect a chair.

2. Select those civil jurisdictions with a demonstrated need within the state and determine the amount to be awarded to each area.

3. Notify the National Board of selected jurisdictions, local contacts, complete mailing addresses and award amounts as soon as possible and no later than *20 working days* after receipt of award letter.

Note.—The minimum award amount for a single jurisdiction is $1,000.

4. Notify the National Board of selection criteria used to determine jurisdictions to receive funds.

E. Local Board's Responsibilities

1. Elect a Chair.

2. *Advertise and promote the program and consider all private voluntary and public organizations providing or capable of providing emergency food and shelter services, not only those represented on the Local Board or affiliates of state or national organizations.*

3. Recommend which local organizations should receive grants and the amounts of the grants.

Note: The minimum grant per LRO is $300.

4. Establish an appeals process to address participation or funding including, where deemed appropriate, the involvement of individuals not a part of the dispute in the decision; hear and resolve appeals made by funded or non-funded organizations; and investigate complaints made by individuals or organizations. *Appeals should be handled promptly.* Those cases that cannot be handled locally or that involve fraud or other misuse of federal funds should be referred in writing to the National Board giving details on action that has been taken. (See Annex 1.7.)

5. Secure and retain signed forms from each Local Recipient Organization (LRO) certifying they have read and understand program guidelines and will comply with cost eligibility and reporting requirements.

6. Provide Local Recipient Organizations with a copy of the National Board guidelines.

7. Return Local Board Certification form, board roster *and* Local Board Plan to National Board within *25 working days* after receipt of award notification.

8. *Monitor expenditures of funds and compliance with eligible cost provisions at local level and ensure that all recipient organizations maintain proper documentation and submit reports accurately and on time. Ensure that recipient organizations spend all funds by September 30, 1988.*

9. Notify National Board of changes in Local Board chair, staff contact, or LRO contacts, including complete addresses and phone numbers.

10. Provide technical assistance to service providers.

11. Coordinate local food distribution and other federal assistance programs with state agencies which administer those programs (i.e., USDA—surplus food; LIHEAP—utilities, etc.). [PL 100–77, Sec. 302(b)5]

12. Reallocate funds within a jurisdiction or LRO as necessary, [i.e., food to shelter (or vice-versa)]. When funds are transferred from one recipient organization to another, the Board *must* notify the National Board and the Local Recipient Organizations *in writing.*

13. Submit reports to the National Board on LROs' expenditures by April 29, 1988 (for period through March 31, 1988) and October 31, 1988 (for period through September 30, 1988). *All required report forms will be sent by the National Board.*

14. After close of program, review for accuracy all recipient organizations' reports and documentation. Forward documentation for specified LROs to the National Board as requested. In the event of expenditures violating the eligible costs under this award, the Local Board must require reimbursement to the National Board.

Local Boards are required to remain in operation until all program and audit requirements of the National Board have been satisfied. *All records related to the program must be retained for three (3) years.*

2.2 *General Guidelines*

A. Grant Award Process

United Way of America has been designated as the fiscal agent for the National Board and as such will process all Local Board plans. Checks will be written to organizations recommended by Local Boards for funding. Local Boards have the right to reallocate funds throughout the program period, as they determine necessary. When a Local Board reallocation between two or more LROs occurs, it is the responsibility of the Local Board to promptly notify the National Board in writing so that the National Board's records can be updated accordingly.

To ensure greater accountability and reporting, grant awards over $5,000 will be made in multiple payments as follows:

- Awards of $5,000 or less will receive a single check for the total amount;
- Awards totaling more than $5,000 but less than $100,000 will be paid in two equal installments;
- Awards totaling $100,000 or more will be paid in three equal installments.

The first check will be mailed directly to the Local Recipient Organization and second and third checks will be mailed to the Local Board Chair, upon his/her written request. The Local Board will distribute second/third checks once they are assured that the organization is implementing the program as intended and according to the guidelines in this Plan.

B. Designation of Target Areas

Local areas will be selected to receive funds from the National Board based upon average unemployment statistics from the Department of Labor for the period June 1986 through May 1987 and poverty statistics from the 1980 census. The Board adopted this combined approach in order to more effectively target funds for high-need areas. *Funds designated for a particular jurisdiction must be used to provide services within that jurisdiction.*

Jurisdictions may qualify for an *award* based upon their rate of poverty. Once a jurisdiction's eligibility is established, the National Board will determine its funds distribution based on a ratio calculated as follows: The average number of unemployed within an eligible area divided by the average number of unemployed covered by the national program equals the area's portion of the award (less National Board administrative costs, and less that portion of program funds required to fulfill designated state awards).

Area's Average Number Unemployed

Average number unemployed in all eligible areas = Area's percent of the award (less National Board's

administrative costs and state awards)

A notice will be placed in the **Federal Register** in March 1988 listing the civil jurisdictions that are selected and the dollar amount each has been awarded.

Puerto Rico and U.S. Territories will receive a percentages of the total award based on the decision of the National Board.

1. *State Set-Aside*

In addition to the awards made to qualifying jurisdictions, an award may be made to *each state*. This *State Set-Aside Program* has been adopted to allow greater flexibility in selection of jurisdictions and is intended to target pockets of homelessness or poverty in non-qualifying jurisdictions, areas experiencing drastic economic changes such as plant closings, areas with high levels of unemployment or poverty which do not meet the minimum 1000 unemployed, or jurisdictions which have documented measures of need which are not adequately reflected in unemployment and poverty data.

A State Set-Aside Committee in each state will recommend high need jurisdictions and award amounts to the National Board. *Priority consideration is to be given to jurisdictions otherwise ineligible for funding, although funded jurisdictions are not exempt from receiving additional funding.*

The distribution of funds to State Set-Aside Committees will be based on a ratio calculated as follows: the state's average number of unemployed in non-funded jurisdictions divided by the average number of unemployed in non-funded jurisdictions nationwide equals the state's percentage of the total amount available for State Set-Aside awards.

C. Formation of Local Boards

Each area designated by the National Board to receive funds shall constitute a Local Board. Where, in a local community, there are affiliates of the voluntary organizations represented on the National Board, they should be represented on the Local Board. The County Executive/Mayor, appropriate head of local government or his/her designee will replace the FEMA member. Local Boards are encouraged to expand participation of other private non-profit organizations on the Local Board. The members of each Local Board will elect a chair.

1. If a locality has previously received National Board funding, the previous chair of the Local Board will be contacted regarding any new funding the locality is designated to receive. The Local Board may elect a new chair.

2. If a locality has not previously received funding and is now designated as being in high-need, the National Board has designated the local United Way to constitute and convene a Local Board as described above. In the event the local United Way does not convene the board, the local American Red Cross, the local Salvation Army, or government official will be responsible for convening the initial meeting of the Local Board.

3. In each state, the state United Way (or United Way in the capital city) will be notified of the award amount available to the State Set-Aside Committee and shall convene a committee. Where there are state level affiliates of the voluntary organizations represented on the National Board, they should be represented on the State Board. If no single state affiliate exists, an appropriate representative should be selected. The Governor or his/her representative will replace the FEMA member. Members of the State Set-Aside Committee shall elect a chair.

State Set-Aside Committees are charged with recommending high-need jurisdictions and award amounts within the state. The State Set-Aside Committee has *20 working days* to notify the National Board in writing of its selections and the appropriate contact person for each area.

Note.—The minimum award amount for a single jurisdiction is $1,000.

The National Board will then notify these jurisdictions directly, and the State Set-Aside Committee may dissolve after Local Boards have been chosen.

4. Local Boards which determine that they can better utilize their resources by merging with neighboring boards may do so. The head of government or his/her designee for each jurisdiction must sit on the merged board, along with agency representatives from each jurisdiction. The merged Local Board must ensure that the award amount designated for each civil jurisdiction is used to provide assistance to individuals within that jurisdiction.

5. Local Boards will have 25 working days after notification of award selection by the National Board in which to:

- Advertise and promote the availability of funds;
- Select local organizations to receive grants; and,
- Complete and return required application forms to the National Board.

If a Local Board is unable to satisfy the National Board as to the local area's capability to utilize funds in accordance with this Plan, the National Board may reallocate the funds to other jurisdictions.

6. The chair of the Local Board will be the central point of contact between the National Board and the Local Recipient Organizations selected to receive assistance for emergency food and shelter programs. To facilitate program coordination, the chair of the Local Board will contact the state agencies through which surplus food and other federal assistance is provided. A listing of those agencies will be provided to the Local Board along with the grant award letter. [PL 100-77, Sec. 302(b)5]

7. Local Boards will be responsible for monitoring programs carried out by the organizations they have selected to receive funds. LROs with questions concerning cost eligibility or program procedures, should direct them to the Local Board. The Local Board will contact the National Board for further clarification, if necessary.

Local Boards should work with LROs to ensure that funds are being used to meet immediate food and shelter needs on an ongoing basis. Funds should not be reserved for anticipated future needs in lieu of providing immediate assistance.

The Local Board should reallocate funds whenever it determines that the original allocations plan does not reflect the actual need for services or if an LRO is unable to effectively utilize its full award. Funds may also be reallocated if an LRO makes ineligible expenditures or uses funds for items which have clearly not been approved by the Local Board. Funds held in escrow for LROs which have unresolved audit problems must be reallocated within a specified period of time or may be reclaimed by the National Board.

The Local Board may approve reallocations of funds between LROs which have already been approved by the National Board. However, the National Board must be notified in writing of any local transfer of funds between two or more LROs. The Local Board may also return funds to the National Board for reissuance to another LRO or request reallocation of remaining funds before they are released by the National Board (e.g., second checks). Refer to Annex 1.6 for preferred format to use in notifying the National Board of reallocations.

If the Local Board wishes to transfer funds to an agency which was not approved on the original board plan, a request for approval must be made to the National Board. An LRO must be approved by the National Board *prior to* receipt of funds.

The National Board does not need to be notified of changes within a single LROs budget that have been approved by the Local Board.

To prevent fraud or misuse of funds, Local Boards might wish to create a central clearinghouse for all organizations providing similar assistance to individuals so information can be shared daily. When misuse of funds has been found, the Local Board is advised to reallocate funds from the LRO in question to other LROs. The Local Board must report suspected fraud to local authorities and must notify the National Board of such cases in writing.

D. Selection of Recipient Organizations

In selecting Local Recipient Organizations to receive funds, the Local Board must consider the demonstrated capability of any organization to provide food and shelter assistance. *Local participation in the program is not limited to organizations that are part of any state or national organization.* Organizations that received awards from previous legislation may again be eligible providing the organization still meets eligibility requirements. The Local Board should be prepared to justify an allocation of ⅓ or more of its total award to a single recipient organization.

For a local organization to be eligible for funding it must:

- Be nonprofit [PL 100–77, Sec. 302 (b)1] or agency of government;
- Have an accounting system; *conduct an annual audit;*
- Practice nondiscrimination (those agencies with a religious affiliation wishing to participate in the program must agree not to refuse services to an applicant based on religion, nor will such groups engage in any religious proselytizing in any program receiving Emergency Food and Shelter Program funds); and,
- For private voluntary organizations, have a voluntary board.

Each Local Recipient Organization will be responsible for certifying in writing to the Local Board that it has read and agrees to abide by the cost eligibility and reporting standards of this Plan, and any other requirements made by the Local Board. (See Annex 1.5.)

Where is a local non.profit organization which does not have an adequate accounting system but meets all the other criteria, the Local Board may authorize funds to be channeled through a fiscal agent. Fiscal agents will be held accountable for compliance with the Plan.

All agencies receiving funds through a fiscal agent must be separately listed on the Board Plan. Checks will be made out to the fiscal agent on behalf of the recipient organization. The fiscal agent will be responsible for paying all bills and maintaining all financial documentation for the recipient organization. No payment will be made directly to the recipient organization.

Note.—An agency may not serve as *both* an LRO and a vendor of service to other LROs in this program.

E. Client Eligibility

The National Board does not set client eligibility criteria. Local Boards may choose to set such criteria. If the Local Board does not set eligibility criteria, the LRO may use its existing criteria or set criteria for assistance under this award. However, the LRO's criteria must provide for assistance to needy individuals without discrimination (age, race, sex, religion, national origin or handicap).

The National Board does not mandate nor recommend the use of any particular existing criteria (i.e., food stamp guidelines, welfare guidelines, income guidelines).

Services received under this program do not reduce or affect assistance any individual receives under any other federal, state or local assistance program.

2.3 *Eligibility of Costs*

The intent of this appropriation is for the *purchase of food and shelter, to supplement and extend current available resources and not to substitute or reimburse ongoing programs and services.* Interpretation questions should be cleared by the recipient organization with the Local Board prior to action. Local Boards unsure of the meaning of these guidelines should contact the Secretariat for clarification *prior to* advising the Local Recipient Organization.

A. *Eligible Program Costs* include, but are not limited to:

1. Food (hot meals, groceries, food vouchers).

2. Transportation expenses related to the provision of food and/or shelter; limited to actual fuel costs, contracted services or public transportation.

3. Purchase of consumable supplies essential to mass feeding (i.e., plastic cups, utensils, detergent, etc.) and/or mass shelters of five or more beds (i.e., soap, toothbrushes, toothpaste, cleaning material, etc.)

4. Purchase of small equipment *not exceeding $300 per item* and essential to mass feeding (i.e., pots, pans, toasters, blenders, etc.) and/or mass shelters (i.e., cots, blankets, linens, etc.)

5. Leasing, *only for the program period,* of capital equipment associated with mass feeding or mass shelters (i.e., stoves, freezers, vans, etc. with costs over $300 per item) *only if approved in advance by the Local Board.*

6. Lease-purchase agreements for equipment costing over $300 per item only if:

a. The cost of the lease for the program period *remaining* as of the date of the agreement (i.e., date of the agreement up to September 30, 1988) would exceed the purchase price; *and,*

b. The agreement is approved in advance by the Local Board; *and,*

c. The equipment is related to providing mass food or shelter services.

7. Direct expenses associated with *new* or *expanded services* or to *prevent closings* of mass shelters or feeding operations *only during program period* (i.e., rent, cleaning, pest control, utilities, garbage pickup, etc.).

8. Increased utility costs due to expanded services for mass shelters and mass feeding centers.

Note.—*This is not intended for reimbursement of normal operating costs.*

9. Limited emergency rent or mortgage assistance for individuals or families provided:

a. All other resources have been exhausted *and;*

b. Payment is limited to *one month's* cost for each individual or family *and;*

c. Assistance is provided *only once* in each award phase for each individual or family.

d. Late fees, but *not deposits,* are eligible.

10. First month's rent may be paid when an individual or family:

a. Is transient and plans to stay in the area for an extended period of time, *or;*

b. Is moving from a temporary shelter to a more permanent living arrangement, or;

c. Is unable to have existing landlord agree to accept one month's rent payment in lieu of payment for *all* back rent.

d. *Cannot* be provided in addition to assistance provided under Item 9 above.

e. All provisions of Item 9 above apply.

f. Can be provided in addition to assistance provided in Item 11 below.

11. Off-site emergency lodging in a hotel or motel provided:

a. No on-site shelter is available; and

b. Is limited to 30-days assistance per individual or family during the program period. (Note: Assistance may be extended in extreme cases with prior Local Board written approval. A copy of

this approval should accompany LROs documentation.)

Note.—An LRO may not operate as a vendor for other LROs.

12. Per diem allowance of $10 per person for mass shelter (five beds or more) providers, only if:

a. Approved in advance by the Local Board; and

b. LRO's total shelter award is expended in this manner.

13. Limited utility assistance (includes gas, electricity, oil, water, firewood) for individuals or families provided:

a. All other resources have been exhausted (i.e., State's Low Income Home Energy Assistance Program); *and,*

b. Payment is limited to one month's cost for each utility for each individual or family; *and,*

c. Each utility can be paid only once in each award phase to any individual or family.

d. Reconnect fees, but *not deposits* are eligible, but again only a *one month* payment for each utility for each individual or family in each award phase.

14. *Limited* amounts of basic first aid supplies (i.e., aspirin, bandaids, cough syrup) for mass shelter providers and mass feeding sites only.

15. Rehabilitation of a mass feeding facility or mass shelter, provided:

a. The facility is owned by local, state or federal government or a not-for-profit organization (profit-making facilities or individual residences are not eligible); and,

b. The rehabilitation plan and the contract detailing work to be done and material and equipment to be used or purchased is *approved by the Local Board prior to* the start of the rehabilitation project; and,

c. The rehabilitation is limited to:

1. Bring facility into compliance with local building codes, or

2. Make facility safe, secure and sanitary. [PL 100–77, Sec. 313(a)3]

d. No award funds are used for *decorative* or *non-essential* purposes or routine maintenance/repairs.

e. All rehabilitation work is *completed* and *paid for* by the end of the award phase, September 30, 1988. (Expenses which occur after that date will not be accepted as eligible costs.)

Note: Refer to the Preamble of the Plan for further detail on the National Board's intent with regard to shelter rehabilitation.

Local Boards may further restrict the allowable costs mentioned above as they deem necessary.

B. *Ineligible Program Costs:* Purposes for which funds *cannot be used,* include, but are not limited to:

1. Rental Security.

2. Deposits of any kind.

3. Payment of more than one month's rent.

4. Payment of more than one month's mortgage.

5. Payment of more than one month's portion of an accumulated utility bill.

6. Payments made directly to a client.

7. Cash payments of any kind *(checks made out to cash).*

8. Real property (land or buildings) costing more than $300.

9. Equipment costing more than $300 per item (i.e., vehicles, office equipment, freezers, washers, etc.), except as provided in Section 2.3A.

10. Repairs or rehabilitation to profit-making facilities.

11. Lease-purchase agreements, except as provided in Section 2.3A.

12. Administrative cost reimbursement to state or regional offices of governmental or voluntary organizations.

13. Lobbying efforts.

14. Expenditures made prior to October 1, 1987.

15. Expenditures made after September 30, 1988.

16. Repairs of any kind to an individual's house or apartment.

17. Purchase of supplies or equipment for an individual's home or private use.

18. Client-owned transportation.

19. Purchase of prescription medication and related medical supplies, except as provided in Section 2.3A 14.

20. Purchase of clothing (except underwear/diapers for clients of mass shelters, if necessary).

21. Payments for expenses not incurred (i.e., where no goods or services have been provided during new program period).

22. Payments to LROs themselves (internal transfers of funds) for program expenses that are not eligible under these guidelines, except as provided in Section 2.3A (documentation must be provided if such payments/transfers are made).

23. Telephone costs, except as administration allowance and limited to the total allowance (2%).

24. Salaries, except as administration allowance and limited to the total allowance (2%).

25. Encumberment of funds for shelter, rehabilitation, utilities; that is, payments for goods and/or services which are purchased and to be delivered at a later date; unless it is intended that these goods and/or services are *received on or before September 30, 1988.*

C. *Administration Allowance*

There is an administration allowance limitation of two percent (2%) of total funds received by the Local Board excluding any interest earned.

The local administration allowance is intended for use by LROs and *not* for reimbursement of program or administrative costs a recipient's parent organization (its state or regional offices) might incur as a result of this additional funding (See Section 2.3B, Eligibility of Costs).

The Local Board may elect to use, for its own administrative costs, all or any portion of the 2% allowance.

The decision on distribution of the allowance among local LROs rests with the Local Board. No LRO may receive an allowance greater than 2% of that LROs award amount except with specific approval by the National Board.

The State Board, when in operation, may utilize a maximum of one-half of one percent (.5%) for its administrative costs in allocating the State Set-Aside grant.

Any of the administrative allowance not used must be put back into program funds for additional services.

3.0 *Waivers*

Local Boards may receive requests for variances in the budgets they have approved for LROs. Local Boards may allow such changes provided that the requested items are eligible under this program. If there is any doubt on the part of the Local Board as to eligibility, they should contact the National Board for clarification.

In the event that an expenditure requested by an LRO falls outside the program guidelines, the Local Board if supportive, may request a *written* waiver from the National Board in *advance of the purchase.*

Waivers requested because of an audit exception must be submitted to the National Board with a copy to the Local Board chair. A waiver request will not be accepted if the guidelines clearly state that an item is ineligible, such as an expenditure for equipment that is greater than $300, purchase of supplies or equipment for an individual's home or private use, not supplying copies of cancelled checks. A waiver to release the LRO from submitting cancelled checks must be submitted *before* any expenditures are made.

The waiver request from the Local Board should clearly state the need for this exception, approximate costs, timelines or any other pertinent information they deem necessary for the National Board to make their decision.

4.0 *Reporting Requirements*

Local Boards will monitor Local Recipient Organizations' expenditures

and eligible cost compliance throughout the program period. An interim report of expenditures is due to the National Board on April 29, 1988. *A final report (accompanied by financial documentation for specified LROs) is due October 31, 1988.* The National Board advises Local Boards to request at least one other report from their LROs, at a time deemed appropriate by each Local Board. *The National Board will provide forms for all required reports.* (See Annex 2)

LROs which successfully completed previous program audits and are receiving funds under this program will not be required to submit documentation with their final reports *unless specifically asked to do so by the National Board.* Documentation will be required for LROs not funded in previous phases of the program. In addition, a random sample audit and random on-site audits of LROs will be conducted by National Board staff.

Failure of an LRO to comply with the National Board's reporting requirements may result in their funds being held in escrow. Funds will be held until all reporting requirements have been satisfied. If an LRO does not comply in a timely manner the Local Board or National Board may reclaim and reallocate the funds being held in escrow.

The National Board will compile the reports it receives from the Local Boards and submit a detailed accounting of use of all program monies in the form of a report to FEMA by December 31, 1988.

The National Board will conduct an audit of food and shelter expenditures made under this program for specified Local Recipient Organizations. FEMA's Inspector General may also conduct an audit of these funds. The program office in FEMA will prepare a report for the FEMA Director. The FEMA Director will prepare a report to Congress.

5.0 *Amendments to Plan*

The National Board reserves the right to amend this Plan at any time.

SUPPLEMENTARY INFORMATION: This year's authorizing legislation (the Stewart B. McKinney Homeless Assistance Act, Public Law 100–77) specifically calls for "sensitivity to the transition from temporary shelter to permanent homes and attention to the specialized needs of homeless individuals with mental and physical disabilities and illnesses * * *" This clause is to be used as a guide and *not* as a mandate to addressing these specific needs.

The National Board did *not* begin this year's program (Phase VI) with a State Set-Aside component as was done in the previous two program phases. This is solely due to the limitation of total funds initially available ($10 million) to all qualifying counties. However, the National Board has *reinstated* the State Set-Aside Program with the additional allocation of funds ($113,929,000) as a result of Public Law 100–120.

The National Board based their determination of high-need localities on four factors: (1) Most current twelve-month unemployment rates; (2) total number of unemployed within a civil jurisdiction; (3) total number of individuals below the property level within a civil jurisdiction; and (4) the total population of the civil jurisdiction. In addition to unemployment, poverty was used to qualify a jurisdiction for receipt of an award.

Unemployment data for the period of June 1986 through May 1987 and poverty data from the 1980 Census were used to select the following jurisdictions:

- Jurisdictions, including balance of counties, with 18,000+ unemployed and a 5.7%+ rate of unemployment.
- Jurisdictions, including balance of counties, with 1,000 to I7,999 unemployed and a 9%+ rate of unemployment.
- Jurisdictions, including balance of counties, with 1,000 or more unemployed and an 11%+ rate of poverty.

The following is a listing of localities that meet any of the above qualifications.

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS

		Pub. L. 100-71	Pub. L. 100-120
Alabama:			
Autauga County	6-0030-00	$2,115.00	$20,581.00
Baldwin County	6-0032-00	5,447.00	53,011.00
Barbour County	6-0034-00	1,746.00	16,991.00
Blount County	6-0038-00	2,429.00	23,638.00
Butler County	6-0042-00	1,768.00	17,204.00
Calhoun County	6-0044-00	7,929.00	77,166.00
Chambers County	6-0046-00	2,212.00	21,524.00
Chilton County	6-0050-00	2,737.00	26,635.00
Choctaw County	6-0052-00	1,619.00	15,759.00
Clarke County	6-0054-00	2,018.00	19,638.00
Coffee County	6-0060-00	2,340.00	22,771.00
Colbert County	6-0062-00	5,179.00	50,410.00
Conecuh County	6-0064-00	1,805.00	17,569.00
Covington County	6-0068-00	2,688.00	26,163.00
Cullman County	6-0072-00	4,550.00	44,280.00
Dale County	6-0074-00	2,502.00	24,353.00
Dallas County	6-0076-00	5,580.00	54,304.00
De Kalb County	6-0078-00	4,406.00	42,880.00
Elmore County	6-0080-00	2,190.00	21,311.00
Escambia County	6-0082-00	3,149.00	30,650.00
Etowah County	6-0084-00	8,091.00	78,748.00
Fayette County	6-0086-00	1,580.00	15,378.00
Franklin County	6-0088-00	3,062.00	29,799.00
Houston County	6-0098-00	4,738.00	46,105.00
Jackson County	6-0102-00	4,151.00	40,401.00
Jefferson County	6-0104-00	42,145.00	410,184.00
Lauderdale County	6-0110-00	6,148.00	59,841.00
Lawrence County	6-0112-00	2,816.00	27,410.00
Lee County	6-0114-00	4,231.00	41,177.00
Limestone County	6-0116-00	3,873.00	37,693.00
Madison County	6-0122-00	14,030.00	136,550.00
Marengo County	6-0126-00	1,658.00	16,139.00
Marion County	6-0128-00	3,582.00	34,864.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Marshall County	6-0130-00	6,145.00	59,810.00
Mobile County	6-0132-00	29,452.00	286,654.00
Monroe County	6-0136-00	2,002.00	19,485.00
Montgomery County	6-0138-00	11,536.00	112,273.00
Morgan County	6-0142-00	7,264.00	70,701.00
Pickens County	6-0146-00	1,708.00	16,626.00
Pike County	6-0148-00	1,661.00	16,169.00
Russell County	6-0152-00	3,165.00	30,803.00
St. Clair County	6-0154-00	2,632.00	25,616.00
Shelby County	6-0156-00	3,928.00	38,226.00
Sumter County	6-0158-00	1,733.00	16,869.00
Talladega County	6-0160-00	6,155.00	59,901.00
Tallapoosa County	6-0162-00	2,310.00	22,482.00
Tuscaloosa County	6-0164-00	8,094.00	78,779.00
Walker County	6-0168-00	6,295.00	61,271.00
Washington County	6-0170-00	1,636.00	15,926.00
Winston County	6-0174-00	2,959.00	28,795.00
State Set-Aside Committee, AL	6-0176-00	.00	108,575.00
		263,189.00	2,670,088.00
Alaska:			
Fairbanks North Star Boro	6-0196-00	7,210.00	70,214.00
Kenai Peninsula Borough	6-0202-00	4,616.00	44,949.00
Matanuska-Susitna Census	6-0210-00	4,474.00	43,565.00
State Selection Committee, AK	6-0232-00	3,700.00	154,907.00
		20,000.00	313,636.00
Arizona:			
Apache County	6-0242-00	4,639.00	45,147.00
Cochise County	6-0244-00	5,206.00	50,668.00
Coconino County	6-0246-00	6,444.00	62,716.00
Gila County	6-0248-00	2,826.00	27,502.00
Maricopa County	6-0256-00	91,981.00	895,222.00
Mohave County	6-0268-00	4,371.00	42,546.00
Navajo County	6-0270-00	6,914.00	67,294.00
Pima County	6-0272-00	28,591.00	278,273.00
Pinal County	6-0276-00	7,221.00	70,276.00
Santa Cruz County	6-0278-00	2,071.00	20,155.00
Yavapai County	6-0280-00	3,978.00	38,712.00
Yuma County	6-0282-00	13,099.00	127,485.00
State Set-Aside Committee, AZ	6-0284-00	.00	17,571.00
		177,341.00	1,743,567.00
Arkansas:			
Ashley County	6-0306-00	1,730.00	16,839.00
Benton County	6-0310-00	3,309.00	32,202.00
Columbia County	6-0330-00	1,818.00	17,691.00
Craighead County	6-0334-00	3,218.00	31,320.00
Crawford County	6-0336-00	2,269.00	22,087.00
Crittenden County	6-0338-00	3,076.00	29,936.00
Cross County	6-0340-00	1,669.00	16,246.00
Faulkner County	6-0348-00	3,762.00	36,613.00
Garland County	6-0354-00	4,511.00	43,899.00
Greene County	6-0358-00	2,213.00	21,539.00
Hot Spring County	6-0362-00	2,798.00	27,228.00
Independence County	6-0366-00	2,163.00	21,052.00
Jackson County	6-0370-00	2,051.00	19,957.00
Jefferson County	6-0372-00	5,240.00	51,003.00
Johnson County	6-0376-00	1,991.00	19,379.00
Lonoke County	6-0390-00	2,685.00	26,133.00
Miller County	6-0396-00	2,518.00	24,505.00
Mississippi County	6-0398-00	5,003.00	48,691.00
Ouachita County	6-0408-00	1,908.00	18,573.00
Phillips County	6-0412-00	2,690.00	26,178.00
Poinsett County	6-0416-00	1,875.00	18,253.00
Pope County	6-0420-00	2,538.00	24,703.00
Pulaski County	6-0424-00	18,709.00	182,093.00
St. Francis County	6-0432-00	3,989.00	38,819.00
Sebastian County	6-0440-00	5,120.00	49,832.00
Union County	6-0450-00	2,923.00	28,445.00
Washington County	6-0454-00	3,926.00	38,210.00
White County	6-0456-00	4,260.00	41,466.00
State Set-Aside Committee, AR	6-0462-00	.00	258,835.00
		99,962.00	1,231,727.00
California:			
Oakland County	6-0646-00	22,398.00	217,991.00
Alameda County	6-0634-00	34,873.00	339,406.00
Butte County	6-0654-00	9,487.00	92,332.00
Contra Costa County	6-0660-00	32,001.00	311,448.00
Fresno County/City	6-0464-00	54,050.00	526,047.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Glenn County	6-0676-00	1,921.00	18,694.00
Humboldt County	6-0678-00	6,391.00	62,198.00
Imperial County	6-0680-00	15,206.00	147,989.00
Kern County	6-0684-00	41,337.00	402,320.00
Kings County	6-0688-00	5,730.00	55,764.00
Lake County	6-0690-00	3,052.00	29,707.00
Los Angeles County/City	6-0695-00	429,668.00	4,181,803.00
Madera County	6-0760-00	5,700.00	55,475.00
Mendocino County	6-0768-00	4,768.00	46,409.00
Merced County	6-0770-00	13,683.00	133,174.00
Monterey County	6-0776-00	23,169.00	225,490.00
Orange County	6-0786-00	74,638.00	726,424.00
Riverside County	6-0820-00	40,626.00	395,399.00
Sacramento County	6-0824-00	42,082.00	409,560.00
San Benito County	6-0828-00	3,482.00	33,890.00
San Bernardino County	6-0830-00	42,722.00	415,797.00
San Diego County	6-0840-00	78,899.00	767,889.00
San Francisco City/County	6-0858-00	32,846.00	319,677.00
San Joaquin County	6-0860-00	32,019.00	311,631.00
San Luis Obispo County	6-0864-00	6,583.00	64,069.00
Santa Barbara County	6-0876-00	13,893.00	135,212.00
Santa Clara County	6-0880-00	67,157.00	653,608.00
Santa Cruz County	6-0892-00	14,324.00	139,410.00
Shasta County	6-0896-00	8,598.00	83,677.00
Siskiyou County	6-0900-00	3,276.00	31,883.00
Stanislaus County	6-0912-00	31,056.00	302,261.00
Sutter County	6-0916-00	5,505.00	53,574.00
Tehama County	6-0918-00	2,574.00	25,053.00
Tulare County	6-0922-00	23,977.00	233,354.00
Tuolumne County	6-0926-00	2,176.00	21,174.00
Ventura County	6-0928-00	33,201.00	323,115.00
Yolo County	6-0938-00	7,894.00	76,832.00
Yuba County	6-0940-00	3,682.00	35,837.00
State Set-Aside Committee, CA	6-0942-00	.00	487,807.00
		1,274,644.00	12,893,380.00
Colorado:			
Adams County	6-0968-00	22,080.00	214,888.00
Boulder County	6-0990-00	12,677.00	123,378.00
Delta County	6-1010-00	1,961.00	19,090.00
Denver City/County	6-1012-00	35,717.00	347,620.00
Fremont County	6-1026-00	2,313.00	22,512.00
Garfield County	6-1028-00	2,288.00	22,269.00
La Plata County	6-1056-00	2,462.00	23,958.00
Larimer County	6-1058-00	9,983.00	97,154.00
Mesa County	6-1068-00	7,324.00	71,279.00
Montezuma County	6-1074-00	2,126.00	20,687.00
Montrose County	6-1076-00	2,015.00	19,607.00
Morgan County	6-1078-00	1,707.00	16,611.00
Otero County	6-1080-00	1,596.00	15,531.00
Pueblo County	6-1092-00	9,398.00	91,465.00
Weld County	6-1116-00	8,987.00	87,464.00
State Set-Aside Committee, CO	6-11220-00	.00	539,554.00
		122,634.00	1,733,067.00
Connecticut:			
Fairfield County	6-1422-00	25,881.00	251,897.00
Hartford County	6-1438-00	24,709.00	240.48800
New Haven County	6-1458-00	24,135.00	234,891.00
State Set-Aside Committee, CT	6-1478-00	.00	127,536.00
		74,725.00	854,812.00
Delaware:			
Kent County	6-1480-00	3,291.00	32,050.00
New Castle County	6-1482-00	12,532.00	122,039.00
Sussex County	6-1486-00	2,926.00	28,490.00
State Selection Committee, DE	6-1488-00	1,251.00	67,421.00
	6	20,000.00	250,000.00
District of Columbia:			
District of Columbia	6-1492-00	38,397.00	373,707.00
		38,397.00	373,707.00
Florida:			
Alachua County	6-1556-00	4,957.00	48,250.00
Bay County	6-1562-00	8,880.00	86,430.00
Brevard County	6-1566-00	16,898.00	164,463.00
Broward County	6-1570-00	40,581.00	394,924.00
Citrus County	6-1586-00	2,713.00	26,407.00
Collier County	6-1590-00	5,018.00	48,843.00
Columbia County	6-1592-00	2,454.00	23,882.00
Miami City	6-1598-00	24,266.00	236,168.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Dade County	6-1594-00	65,793.00	640,344.00
Duval County	6-1608-00	27,468.00	267,336.00
Escambia County	6-1612-00	11,900.00	115,818.00
Hernando County	6-1634-00	3,265.00	31,776.00
Highlands County	6-1636-00	2,379.00	23,151.00
Hillsborough County	6-1638-00	37,413.00	364,124.00
Indian River County	6-1644-00	5,120.00	49,832.00
Jackson County	6-1646-00	2,322.00	22,604.00
Lake County	6-1652-00	5,511.00	53,635.00
Lee County	6-1654-00	8,038.00	78,231.00
Leon County	6-1656-00	5,818.00	56,631.00
Manatee County	6-1666-00	5,506.00	53,589.00
Marion County	6-1668-00	6,667.00	64,891.00
Martin County	6-1670-00	3,513.00	34,195.00
Monroe County	6-1672-00	1,599.00	15,561.00
Nassau County	6-1674-00	2,446.00	23,805.00
Okaloosa County	6-1676-00	5,836.00	56,798.00
Okeechobee County	6-1678-00	1,597.00	15,546.00
Orange County	6-1680-00	25,944.00	252,505.00
Osceola County	6-1684-00	3,349.00	32,598.00
Palm Beach County	6-1686-00	34,306.00	333,885.00
Pinellas County	6-1694-00	26,208.00	255,076.00
Polk County	6-1702-00	27,129.00	264,035.00
Putnam County	6-1706-00	3,113.00	30,301.00
St. Johns County	6-1708-00	3,953.00	38,469.00
St Lucie County	6-1710-00	9,807.00	95,450.00
Santa Rosa County	6-1712-00	3,382.00	32,917.00
Sarasota County	6-1714-00	6,583.00	64,069.00
Volusia County	6-1728-00	11,223.00	109,231.00
State Set-Aside Committee, FL	6-1738-00	.00	242,861.00
		462,955.00	4,748,649.00
Georgia:			
Atlanta Dekalb, Fulton Counties	6-1740-00	54,438.00	529,819.00
Macon/Bibb, Jones Counties	6-1742-00	7,555.00	73,531.00
Baldwin County	6-1780-00	1,593.00	15,500.00
Bartow County	6-1786-00	2,637.00	25,661.00
Burke County	6-1806-00	2,141.00	20,839.00
Carroll County	6-1816-00	2,791.00	27,166.00
Chatham County	6-1822-00	9,625.00	93,670.00
Clarke County	6-1832-00	2,902.00	28,247.00
Coffee County	6-1842-00	1,583.00	15,409.00
Colquitt County	6-1844-00	2,116.00	20,596.00
Coweta County	6-1850-00	1,765.00	17,173.00
Dougherty County	6-1870-00	8,870.00	86,323.00
Floyd County	6-1892-00	4,290.00	41,755.00
Glynn County	6-1906-00	2,380.00	23,167.00
Gordon County	6-1908-00	1,868.00	18,177.00
Houston County	6-1932-00	2,746.00	26,726.00
Laurens County	6-1956-00	1,888.00	18,375.00
Lowndes County	6-1966-00	3,054.00	29,723.00
Muskogee County	6-1994-00	7,646.00	74,413.00
Newton County	6-1998-00	2,051.00	19,957.00
Polk County	6-2014-00	1,708.00	16,626.00
Richmond County	6-2026-00	9,018.00	87,768.00
Spalding County	6-2036-00	2,435.00	23,699.00
Sumter County	6-2042-00	1,976.00	19,227.00
Thomas County	6-2056-00	2,099.00	20,429.00
Tift County	6-2058-00	1,600.00	15,576.00
Troup County	6-2066-00	3,381.00	32,902.00
Walker County	6-2076-00	2,652.00	25,813.00
Ware County	6-2080-00	2,405.00	23,410.00
Whitfield County	6-2094-00	3,259.00	31,715.00
State Set-Aside Committee, GA	6-2104-00	.00	689,976.00
		154,472.00	2,193,368.00
Hawaii:			
Hawaii County	6-2108-00	5,439.00	52,965.00
State Selection Committee, HI	6-2116-00	14,561.00	197,035.00
		20,000.00	250,000.00
Idaho:			
Bannock County	6-2134-00	5,112.00	49,756.00
Bingham County	6-2140-00	2,709.00	26,361.00
Bonner County	6-2146-00	2,097.00	20,413.00
Canyon County	6-2156-00	6,520.00	63,461.00
Kootenai County	6-2184-00	5,300.00	51,581.00
Minidoka County	6-2196-00	1,810.00	17,615.00
NEZ Perce County	6-2198-00	1,905.00	18,542.00
Shoshone County	6-2208-00	2,194.00	21,356.00
Twin Falls County	6-2212-00	3,507.00	34,134.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
State Set-Aside Committee, ID	6-2218-00	.00	194,282.00
		31,154.00	497,501.00
Illinois:			
Aurora/Dupage, Kane Counties	6-2220-00	43,342.00	421,820.00
Adams County	6-2342-00	4,471.00	43,519.00
Boone County	6-2348-00	2,477.00	24,110.00
Bureau County	6-2352-00	2,352.00	22,893.00
Champaign County	6-2360-00	6,182.00	60,175.00
Clark County	6-2366-00	1,633.00	15,896.00
Clay County	6-2368-00	1,577.00	15,348.00
Clinton County	6-2370-00	2,493.00	24,262.00
Coles County	6-2372-00	3,046.00	29,647.00
Chicago City	6-2378-00	195,990.00	1,907,493.00
Cook County	6-2374-00	116,658.00	1,135,390.00
Crawford County	6-2398-00	2,068.00	20,124.00
De Kalb County	6-2402-00	3,149.00	30,650.00
De Witt County	6-2404-00	1,766.00	17,189.00
Edgar County	6-2414-00	1,771.00	17,234.00
Fayette County	6-2420-00	1,954.00	19,014.00
Franklin County	6-2424-00	4,145.00	40,340.00
Fulton County	6-2426-00	3,166.00	30,331.00
Grundy County	6-2432-00	2,423.00	23,577.00
Henry County	6-2442-00	3,876.00	37,724.00
Jackson County	6-2446-00	3,473.00	33,799.00
Jefferson County	6-2450-00	4,289.00	41,739.00
Kankakee County	6-2464-00	6,486.00	63,126.00
Knox County	6-2468-00	4,672.00	45,466.00
La Salle County	6-2474-00	8,935.00	86,962.00
Lawrence County	6-2476-00	2,151.00	20,931.00
Mc Donough County	6-2484-00	1,999.00	19,455.00
Macon County	6-2490-00	9,609.00	93,518.00
Macoupin County	6-2494-00	3,102.00	30,194.00
Madison County	6-2496-00	18,106.00	176,221.00
Marion County	6-2498-00	3,935.00	38,302.00
Montgomery County	6-2512-00	2,341.00	22,786.00
Peoria County	6-2520-00	11,285.00	109,840.00
Perry County	6-2524-00	2,102.00	20,459.00
Randolph County	6-2536-00	2,230.00	21,706.00
Richland County	6-2538-00	2,068.00	20,124.00
Rock Island County	6-2540-00	12,286.00	119,575.00
St. Clair County	6-2542-00	18,675.00	181,758.00
Saline County	6-2546-00	2,682.00	26,102.00
Shelby County	6-2556-00	1,775.00	17,280.00
Tazewell County	6-2562-00	8,132.00	79,144.00
Vermilion County	6-2566-00	7,883.00	76,725.00
Warren County	6-2570-00	2,152.00	20,946.00
Wayne County	6-2574-00	2,208.00	21,493.00
White County	6-2476-00	2,390.00	23,258.00
Will County	6-2480-00	19,793.00	192,634.00
Williamson County	6-2586-00	4,890.00	47,596.00
Winnebago County	6-2588-00	18,519.00	180,237.00
State Set-Aside Committee, IL	6-2594-00	.00	592,528.00
		592,657.00	6,360,640.00
Indiana:			
Allen County	6-2622-00	12,580.00	122,435.00
Delaware County	6-2656-00	6,342.00	61,727.00
Fayette County	6-2666-00	1,697.00	16,519.00
Greene County	6-2680-00	2,315.00	22,528.00
Jasper County	6-2698-00	1,930.00	18,786.00
Jefferson County	6-2702-00	1,700.00	16,550.00
Knox County	6-2708-00	2,193.00	21,341.00
Gary City	6-2716-00	15,571.00	151,549.00
Lake County	6-2714-00	22,898.00	222,858.00
Madison County	6-2724-00	6,138.00	59,734.00
Marion County	6-2728-00	34,902.00	339,680.00
Monroe County	6-2738-00	3,539.00	34,438.00
Porter County	6-2762-00	8,194.00	79,752.00
Randolph County	6-2770-00	1,979.00	19,256.00
St. Jeseph County	6-2776-00	10,630.00	103,466.00
Sullivan County	6-2790-00	1,589.00	15,470.00
Tippecanoe County	6-2794-00	3,563.00	34,681.00
Vanderburgh County	6-2800-00	8,334.00	81,106.00
Vigo County	6-2806-00	5,086.00	49,497.00
Wayne County	6-2818-00	5,003.00	48,691.00
State Set-Aside Committee, IN	6-2826-00	.00	702,538.00
		156,183.00	2,222,602.00
Iowa:			
Blackhawk County	6-2858-00	9,650.00	93,914.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Johnson County	6-2952-00	1,884.00	18,329.00
Story County	6-3028-00	1,629.00	15,850.00
Wapello County	6-3038-00	2,963.00	28,840.00
Woodbury County	6-3052-00	5,393.00	52,494.00
State Set-Aside Committee, IA	6-3060-00	.00	638,057.00
		21,519.00	847,484.00
Kansas:			
Barton County	6-3088-00	2,477.00	24,125.00
Crawford County	6-3116-00	1,673.00	16,291.00
Douglas County	6-3124-00	2,229.00	21,706.00
Montgomery County	6-3208-00	2,015.00	19,622.00
Wyandotte County	6-3296-00	9,419.00	91,723.00
State Selection Committee, KS	6-3300-00	2,187.00	484,991.00
		20,000.00	658,458.00
Kentucky:			
Barren County	6-3324-00	2,693.00	26,209.00
Bell County	6-3328-00	2,571.00	25,022.00
Boyd County	6-3334-00	3,781.00	36,796.00
Boyle County	6-3336-00	1,804.00	17,554.00
Carter County	6-3358-00	3,787.00	36,857.00
Christian County	6-3362-00	2,766.00	26,924.00
Clark County	6-3364-00	2,188.00	21,296.00
Clay County	6-3366-00	1,594.00	15,515.00
Daviess County	6-3374-00	7,715.00	75,082.00
Lexington/Fayette	6-3384-00	8,623.00	83,920.00
Floyd County	6-3388-00	3,563.00	34,681.00
Graves County	6-3400-00	2,258.00	21,980.00
Grayson County	6-3402-00	1,954.00	19,014.00
Greenup County	6-3406-00	2,623.00	25,524.00
Hardin County	6-3410-00	3,377.00	32,871.00
Harlan County	6-3412-00	3,529.00	34,347.00
Henderson County	6-3418-00	3,910.00	38,058.00
Hopkins County	6-3424-00	3,016.00	29,358.00
Jefferson County	6-3428-00	41,465.00	403,567.00
Johnson County	6-3434-00	2,410.00	23,456.00
Knox County	6-3442-00	1,707.00	16,611.00
Laurel County	6-3446-00	2,973.00	28,932.00
Letcher County	6-3454-00	2,440.00	23,745.00
Lincoln County	6-3458-00	2,041.00	19,866.00
Logan County	6-3462-00	2,052.00	19,972.00
McCracken County	6-3466-00	3,821.00	37,191.00
Madison County	6-3472-00	2,718.00	26,452.00
Marion County	6-3476-00	1,683.00	16,382.00
Marshall County	6-3478-00	2,138.00	20,809.00
Montgomery County	6-3494-00	2,307.00	22,452.00
Muhlenberg County	6-3498-00	2,644.00	25,737.00
Nelson County	6-3500-00	2,460.00	23,942.00
Ohio County	6-3504-00	2,004.00	19,501.00
Perry County	6-3514-00	2,466.00	24,003.00
Pike County	6-3516-00	6,733.00	65,530.00
Pulaski County	6-3520-00	3,657.00	35,594.00
Warren County	6-3548-00	5,892.00	57,346.00
Whitley County	6-3556-00	2,598.00	25,281.00
State Set-Aside Committee, KY	6-3562-00	.00	510,576.00
		157,961.00	2,047,953.00
Louisiana:			
Shreveport/Bossier, Caddo Parishes	6-3564-00	31,816.00	309,653.00
Acadia Parish	6-3574-00	7,277.00	70,823.00
Louisiana:			
Allen Parish	6-3576-00	2,390.00	23,258.00
Ascension Parish	6-3578-00	6,713.00	65,332.00
Assumption Parish	6-3580-00	3,306.00	32,172.00
Avoyelles Parish	6-3582-00	5,295.00	51,535.00
Beauregard Parish	6-3584-00	2,887.00	28,095.00
Calcasieu Parish	6-3598-00	16,721.00	162,744.00
Catahoula Parish	6-3606-00	1,883.00	18,329.00
Concordia Parish	6-3610-00	3,196.00	31,107.00
De Soto Parish	6-3612-00	3,268.00	31,807.00
East Baton Rouge Parish	6-3614-00	28,284.00	275,276.00
East Feliciana Parish	6-3620-00	1,713.00	16,671.00
Evangeline Parish	6-3622-00	4,240.00	41,268.00
Franklin Parish	6-3624-00	2,649.00	25,783.00
Grant Parish	6-3626-00	1,639.00	15,957.00
Iberia Parish	6-3628-00	9,898.00	96,332.00
Iberville Parish	6-3630-00	3,429.00	33,373.00
Jefferson Parish	6-3634-00	36,816.00	358,314.00
Jefferson Davis Parish	6-3638-00	3,887.00	37,830.00
Lafayette Parish	6-3640-00	19,499.00	189,774.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Lafourche Parish	6-3644-00	10,085.00	98,158.00
La Salle Parish	6-3646-00	1,672.00	16,276.00
Lincoln Parish	6-3648-00	1,811.00	17,630.00
Livingston Parish	6-3650-00	7,740.00	75,326.00
Madison Parish	6-3652-00	1,605.00	15,622.00
Morehouse Parish	6-3654-00	3,274.00	31,867.00
Natchitoches Parish	6-3656-00	3,423.00	33,312.00
New Orleans City/Orleans	6-3658-00	41,825.00	707,065.00
Ouachita Parish	6-3660-00	11,410.00	111,041.00
Plaquemines Parish	6-3664-00	2,072.00	20,170.00
Pointe Coupee Parish	6-3666-00	2,679.00	26,072.00
Rapides Parish	6-3668-00	10,212.00	99,390.00
Richland Parish	6-3674-00	2,346.00	22,832.00
Sabine Parish	6-3676-00	2,197.00	21,387.00
St. Bernard Parish	6-3678-00	6,902.00	67,172.00
St. Charles Parish	6-3680-00	3,552.00	34,575.00
St. James Parish	6-3684-00	2,337.00	22,741.00
St. John Baptist Parish	6-3686-00	3,460.00	33,677.00
St. Landry Parish	6-3688-00	11,859.00	115,422.00
St. Martin Parish	6-3690-00	5,395.00	52,509.00
St. Mary Parish	6-3692-00	11,358.00	110,539.00
St. Tammany Parish	6-3694-00	10,881.00	105,900.00
Tangipahoa Parish	6-3696-00	9,324.00	90,750.00
Terrebonne Parish	6-3700-00	12,555.00	122,191.00
Union Parish	6-3702-00	1,969.00	18,193.00
Vermilion Parish	6-3704-00	7,425.00	72,268.00
Vernon Parish	6-3706-00	2,787.00	27,121.00
Washington Parish	6-3708-00	4,060.00	39,519.00
Webster Parish	6-3710-00	4,856.00	47,261.00
West Baton Rouge Parish	6-3712-00	1,832.00	17,827.00
West Carroll Parish	6-3714-00	2,077.00	20,216.00
State Set-Aside Committee, LA	6-3720-00	.00	71,646.00
		401,686.00	3,981,108.00
Maine:			
Androscoggin County	6-3726-00	4,656.00	45,314.00
Aroostook County	6-3728-00	5,068.00	49,330.00
Cumberland County	6-3730-00	5,091.00	49,558.00
Hancock County	6-3736-00	2,049.00	19,942.00
Kennebec County	6-3738-00	4,146.00	40,355.00
Oxford County	6-3744-00	2,054.00	19,987.00
Penobscot County	6-3746-00	5,764.00	56,099.00
Somerset County	6-3752-00	2,602.00	25,327.00
Washington County	6-3756-00	2,043.00	19,881.00
State Set-Aside Committee, ME	6-3760-00	.00	62,667.00
		33,473.00	388,460.00
Maryland:			
Allegany County	6-3774-00	4,461.00	43,413.00
Dorchester County	6-3790-00	2,116.00	20,596.00
Garrett County	6-3794-00	1,919.00	18,679.00
Somerset County	6-3812-00	1,741.00	16,945.00
Wicomico County	6-3818-00	3,118.00	30,346.00
Worcester County	6-3820-00	2,302.00	22,406.00
Baltimore County	6-3822-00	41,602.00	404,890.00
State Set-Aside Committee, MD	6-3824-00	.00	619,972.00
		57,259.00	1,177,247.00
Massachusetts:			
Bristol County	6-4482-00	21,314.00	207,450.00
Essex County	6-4490-00	21,531.00	209,549.00
Hampden County	6-4502-00	13,538.00	131,759.00
Hampshire County	6-4508-00	3,865.00	37,617.00
Middlesex County	6-4510-00	35,317.00	343,725.00
Plymouth County	6-4540-00	14,275.00	138,939.00
Suffolk County	6-4550-00	22,904.00	222,919.00
Worcester County	6-4554-00	$20,114.00	195,767.00
State Set-Aside Committee, MA	6-4558.00	.00	160,737.00
		152,859.00	1,648,462.00
Michigan:			
Lansing/Eaton, Ingham Counties	6-4560-00	20,752.00	201,974.00
Alpena County	6-4638-00	2,862.00	27,852.00
Bay County	6-4648-00	9,896.00	96,317.00
Berrien County	6-4652-00	9,974.00	97,078.00
Calhoun County	6-4656-00	7,906.00	76,953.00
Cass County	6-4660-00	2,530.00	24,627.00
Charlevoix County	6-4662-00	1,579.00	15,363.00
Cheboygan County	6-4664-00	2,735.00	26,620.00
Chippewa County	6-4666-00	2,885 00	28,080.00
Clare County	6-4668-00	1,711 00	16,656.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Delta County	6-4674-00	2,818.00	27,426.00
Dickinson County	6-4676-00	1,704.00	16,580.00
Emmet County	6-4682-00	2,129.00	20,718.00
Genesee County	6-4684-00	34,375.00	334,554.00
Gratiot County	6-4694-00	3,256.00	31,685.00
Hillsdale County	6-4696-00	2,879.00	28,019.00
Houghton County	6-4698-00	1,902.00	18,512.00
Huron County	6-4700-00	2,738.00	26,650.00
Ionia County	6-4708-00	3,654.00	35,564.00
Iron County	6-4712-00	1,794.00	17,462.00
Isabbella County	6-4714-00	2,852.00	27,760.00
Kalamazoo County	6-4718-00	9,772.00	95,115.00
Kent County	6-4724-00	27,898.00	271,519.00
Lapeer County	6-4734-00	5,225.00	50,851.00
Lenawee County	6-4738-00	6,381.00	62,107.00
Mackinac Count	6-4744-00	2,427.00	23,623.00
Macomb County	6-4746-00	46,456.00	452,151.00
Manistee County	6-4758-00	2,158.00	21,007.00
Marquette County	6-4760.00	4,636.00	45,116.00
Mason County	6-4762-00	1,974.00	19,212.00
Mecosta County	6-4764-00	1,976.00	19,227.00
Menominee County	6-4766-00	1,607.00	15,637.00
Montcalm County	6-4774-00	4,059.00	39,503.00
Muskegon County	6-4778-00	11,555.00	112,456.00
Newaygo County	6-4780-00	2,982.00	29,023.00
Oakland County	6-4782-00	57,149.00	556,211.00
Oceana County	6-4796-00	1,658.00	16,139.00
Osceola County	6-4802-00	1,780.00	17,325.00
Saginaw County	6-4814-00	13,872.00	135,014.00
St. Clair County	6-4818-00	10,909.00	106,174.00
Sanilac County	6-4822-00	2,977.00	28,977.00
Shiawassee County	6-4826-00	5,109.00	49,725.00
Tuscola County	6-4828-00	3,989.00	38,819.00
Van Buren County	6-4830-00	4,773.00	46,455.00
Washtenaw County	6-4832-00	10,703.00	104,166.00
Detroit City	6-4844-00	83,434.00	812,032.00
Wayne County	6-4836-00	53,777.00	523,385.00
Wexford County	6-4854-00	2,313.00	22,513.00
State Set-Aside Committee, MI	6-4856-00	.00	447,584.00
		504,480.00	5,357,516.00
Minnesota:			
Becker County	6-4902-00	1,648.00	16,048.00
Beltrami County	6-4904-00	1,768.00	17,204.00
Blue Earth County	6-4910-00	1,691.00	16,458.00
Clay County	6-4924-00	1,868.00	18,177.00
Crow Wing County	6-4932-00	2,262.00	22,011.00
Hennepin County	6-4950-00	34,365.00	334,508.00
Itasca County	6-4968-00	2,746.00	26,726.00
Morrison County	6-5004-00	1,672.00	16,276.00
Ottern Tail County	6-5020-00	2,627.00	25,568.00
Polk County	6-5028-00	1,824.00	17,751.00
St. Louis County	6-5048-00	12,138.00	118,130.00
Stearns County	6-5058-00	4,868.00	47,383.00
Winona County	6-5082-00	1,960.00	19,075.00
State Set-aside Committee, MN	6-5088-00	.00	599,522.00
		71,438.00	,294,837.00
Mississippi:			
Adams County	6-5090-00	4,157.00	40,462.00
Alcorn County	6-5092-00	3,448.00	33,556.00
Attala County	6-5096-00	1,877.00	18,269.00
Bolivar County	6-5100-00	3,295.00	32,065.00
Chickasaw County	6-5106-00	1,607.00	15,637.00
Clay County	6-5114-00	1,568.00	15,257.00
Coahoma County	6-5116-00	3,254.00	31,670.00
Copiah County	6-5118-00	2,644.00	25,737.00
De Soto County	6-5122-00	3,337.00	32,476.00
Forrest County	6-5124-00	4,868.00	47,383.00
George County	6-5128-00	1,900.00	18,497.00
Grenada County	6-5132-00	1,985.00	19,318.00
Hancock County	6-5134-00	1,938.00	18,862.00
Harrison County	6-5136-00	10,750.00	104,622.00
Hinds County	6-5138-00	17,316.00	,68,524.00
Holmes County	6-1542-00	2,583.00	25,144.00
Jackson County	6-5150-00	9,892.00	96,271.00
Jasper County	6-5152-00	1,652.00	16,078.00
Jefferson Davis County	6-5156-00	1,611.00	15,683.00
Jones County	6-5158-00	5,484.00	53,376.00
Lafayette County	6-5162-00	1,593.00	15,500.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Lamar County	6-5164-00	1,702.00	16,565.00
Lauderdale County	6-5166-00	5,444.00	52,980.00
Lawrence County	6-5168-00	1,691.00	16,458.00
Lee County	6-5172-00	5,056.00	49,208.00
Leflore County	6-5174-00	3,712.00	36,126.00
Lincoln County	6-5176-00	3,284.00	31,959.00
Lowndes County	6-5178-00	4,056.00	39,473.00
Madison County	6-5180-00	3,310.00	32,217.00
Marion County	6-5182-00	2,779.00	27,045.00
Marshall County	6-5184-00	2,483.00	24,171.00
Monroe County	6-5186-00	2,777.00	27,030.00
Neshoba County	6-5190-00	2,040.00	19,851.00
Oktibbeha County	6-5196-00	1,985.00	19,318.00
Panola County	6-5198-00	2,523.00	24,551.00
Pearl River County	6-5200-00	3,020.00	29,388.00
Pike County	6-5204-00	4,220.00	41,070.00
Prentiss County	6-5208-00	1,974.00	19,212.00
Rankin County	6-5212-00	3,929.00	38,241.00
Scott County	6-5214-00	1,852.00	18,025.00
Simpson County	6-5218-00	1,674.00	16,291.00
Sunflower County	6-5224-00	3,137.00	30,529.00
Tate County	6-5228-00	1,586.00	15,439.00
Tippah County	6-5230-00	1,911.00	18,603.00
Tishomingo County	6-5232-00	2,221.00	21,614.00
Union County	6-5236-00	1,635.00	15,911.00
Warren County	6-5240-00	5,008.00	48,737.00
Washington County	6-5242-00	6,753.00	65,727.00
Wayne County	6-5244-00	2,680.00	26,087.00
Winston County	6-5250-00	1,632.00	15,880.00
Yazoo County	6-5254-00	2,204.00	21,448.00
State Set-Aside Committee, MS	6-5256-00	.00	191,980.00
		175,037.00	1,895,521.00
Missouri:			
Kansas City/Clay, Jackson, Platte Coun	6-5258-00	35,805.00	348,487.00
Boone County	6-5290-00	3,035.00	29,540.00
Buchanan County	6-5294-00	4,770.00	46,424.00
Butler County	6-5298-00	2,340.00	22,771.00
Cape Girardeau County	6-5306-00	2,166.00	21,083.00
Dunklin County	6-5346-00	1,811.00	17,630.00
Franklin County	6-5348-00	5,812.00	56,570.00
Greene County	6-5354-00	7,372.00	71,751.00
Howell County	6-5370-00	1,785.00	17,371.00
Jasper County	6-5380-00	3,893.00	37,891.00
Marion County	6-5410-00	1,614.00	15,713.00
Miller County	6-5414-00	1,575.00	15,333.00
Newton County	6-5428-00	1,886.00	18,360.00
Pettis County	6-5442-00	1,841.00	17,919.00
St. Francois County	6-5474-00	2,587.00	25,174.00
Scott County	6-5486-00	1,991.00	19,379.00
Stoddard County	6-5492-00	1,891.00	18,405.00
Taney County	6-5498-00	2,090.00	20,337.00
Washington County	6-5506-00	2,088.00	20,322.00
St. Louis City	6-5516-00	29,120.00	283,414.00
State Set-Aside Committee, MO	6-5518-00	.00	731,507.00
		115,472.00	1,855,381.00
Montana:			
Gallatin County	6-5560-00	2,418.00	23,547.00
Missoula County	6-5592-00	4,410.00	42,941.00
Ravalli County	6-5610-00	1,665.00	16,215.00
Silver Bow County	6-5622-00	2,206.00	21,478.00
State Selection Committee, MT	6-5644-00	9,301.00	222,601.00
		20,000.00	326,782.00
Nebraska:			
Douglas County	6-5722-00	18,722.00	182,214.00
Scotts Bluff County	6-5828-00	2,285.00	22,239.00
State Set-Aside Committee, NE	6-5858-00	.00	227,916.00
		21,007.00	432,369.00
Nevada:			
Clark County	6-5868-00	29,551.00	287,612.00
State Set-Aside Committee, NV	6-5906-00	.00	114,631.00
		29,551.00	402,243.00
New Hampshire:			
State Selection Committee, NH	6-5942-00	20,000.00	250,000.00
County		20,000.00	250,000.00
New Jersey:			
Atlantic County	6-5948-00	11,683.00	113,703.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Camden County	6-5954-00	16,231.00	157,968.00
Cumberland County	6-5962-00	7,255.00	70,610.00
Newark City	6-5974-00	19,413.00	188,938.00
Essex County	6-5966-00	18,170.00	176,845.00
Hudson County	6-5978-00	30,203.00	293,955.00
Mercer County	6-5988-00	10,125.00	98,538.00
Passaic County	6-6018-00	19,905.00	193,729.00
Salem County	6-6028-00	2,995.00	29,145.00
Union County	6-6034-00	20,320.00	197,775.00
State Set-Aside Committee, NJ	6-6042-00	.00	685,680.00
		156,300.00	2,206,886.00
New Mexico:			
Bernalillo County	6-6044-00	25,889.00	251,973.00
Chaves County	6-6050-00	3,334.00	32,445.00
Cibola County	6-6052-00	2,332.00	22,695.00
Curry County	6-6056-00	2,074.00	20,185.00
Dona Ana County	6-6060-00	6,294.00	61,255.00
Eddy County	6-6064-00	4,698.00	45,725.00
Grant County	6-6066-00	1,729.00	16,824.00
Lea County	6-6074-00	5,150.00	50,121.00
McKinley County	6-6082-00	3,617.00	35,199.00
Otero County	6-6086-00	2,188.00	21,296.00
Rio Arriba County	6-6090-00	4,273.00	41,587.00
New Mexico:			
Sandoval County	6-6094-00	3,145.00	30,605.00
San Juan County	6-6096-00	9,338.00	90,887.00
San Miguel County	6-6098-00	2,052.00	19,972.00
Santa Fe County	6-6100-00	5,319.00	51,764.00
Taos County	6-6108-00	4,515.00	43,945.00
Valencia County	6-6114-00	2,430.00	23,653.00
State Set-Aside Committee, NM	6-6116-00	.00	53,272.00
		88,377.00	913,403.00
New York:			
Albany County	6-6120-00	8,606.00	83,753.00
Allegany County	6-6126-00	2,344.00	22,817.00
Broome County	6-6130-00	7,982.00	77,699.00
Cattaraugus County	6-6136-00	4,234.00	41,207.00
Cayuga County	6-6138-00	3,999.00	38,925.00
Chautauqua County	6-6140-00	7,350.00	71,538.00
Chemung County	6-6142-00	3,538.00	34,438.00
Chenango County	6-6144-00	2,008.00	19,546.00
Clinton County	6-6146-00	3,964.00	38,576.00
Cortland County	6-6150-00	2,043.00	19,881.00
Delaware County	6-6152-00	1,568.00	15,257.00
Buffalo City	6-6160-00	20,047.00	195,113.00
Erie County	6-6156-00	24,425.00	237,720.00
Essex County	6-6168-00	2,224.00	21,645.00
Franklin County	6-6170-00	3,581.00	34,849.00
Fulton County	6-6172-00	3,868.00	37,648.00
Green County	6-6176-00	1,807.00	17,584.00
Herkimer County	6-6180-00	4,096.00	39,868.00
Jefferson County	6-6182-00	6,413.00	62,411.00
Madison County	6-6190-00	3,584.00	34,879.00
Monroe County	6-6192-00	26,327.00	256,232.00
Nassau County	6-6202-00	41,593.00	404,814.00
Niagara County	6-6212-00	11,326.00	110,235.00
Oneida County	6-6216-00	9,218.00	89,715.00
Onondaga County	6-6220-00	21,622.00	210,446.00
Oswego County	6-6232-00	9,105.00	88,620.00
Otsego County	6-6234-00	2,208.00	21,493.00
Rensselaer County	6-6240-00	5,214.00	50,744.00
St. Lawrence County	6-6254-00	5,555.00	54,060.00
Schenectady County	6-6258-00	5,134.00	49,969.00
Steuben County	6-6268-00	4,464.00	43,443.00
Suffolk County	6-6270-00	44,652.00	434,582.00
Sullivan County	6-6282-00	2,299.00	22,376.00
Tompkins County	6-6286-00	2,152.00	20,946.00
Ulster County	6-6288-00	4,911.00	47,793.00
Warren County	6-6290-00	2,877.00	28,004.00
Washington County	6-6292-00	2,004.00	19,501.00
Westchester County	6-6296-00	25,956.00	252,611.00
New York City County	6-6314-00	325,214.00	3,165,181.00
State Set-Aside Committee, NY County	6-6312-00	.00	378,826.00
		669,512.00	6,894,945.00
North Carolina:			
High Point/Guilford, Davidson Countie	6-6316-00	16,795.00	163,459.00
Beaufort County	6-6332-00	2,602.00	25,327.00
Bladen County	6-6336-00	1,797.00	17,493.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Brunswick County	6-6338-00	2,945.00	28,658.00
Buncombe County	6-6340-00	6,913.00	67,279.00
Carteret County	6-6352-00	2,485.00	24,186.00
Cleveland County	6-6366-00	3,259.00	31,715.00
Columbus County	6-6368-00	2,859.00	27,821.00
Craven County	6-6370-00	2,391.00	23,273.00
Cumberland County	6-6372-00	8,366.00	81,425.00
Duplin County	6-6386-00	2,060.00	20,048.00
Durham County	6-6388-00	5,375.00	52,311.00
Edgecombe County	6-6392-00	3,152.00	30,681.00
Forsyth County	6-6394-00	9,371.00	91,206.00
Franklin County	6-6398-00	1,699.00	16,535.00
Granville County	6-6408-00	1,788.00	17,402.00
Halifax County	6-6418-00	2,562.00	24,931.00
Harnett County	6-6420-00	2,837.00	27,608.00
Haywood County	6-6422-00	2,269.00	22,087.00
Henderson County	6-6424-00	2,294.00	22,330.00
Johnston County	6-6436-00	2,932.00	28,536.00
Lee County	6-6440-00	2,579.00	25,098.00
Lenoir County	6-6442-00	2,668.00	25,965.00
McDowell County	6-6446-00	1,718.00	16,717.00
Mecklenburg County	6-6454-00	15,068.00	146,651.00
Moore County	6-6462-00	1,730.00	16,839.00
Nash County	6-6464-00	3,154.00	30,696.00
New Hanover County	6-6466-00	6,463.00	62,898.00
Onslow County	6-6470-00	2,279.00	22,178.00
Orange County	6-6472-00	2,199.00	21,402.00
Person County	6-6482-00	2,049.00	19,942.00
Pitt County	6-6484-00	3,277.00	31,898.00
Richmond County	6-6490-00	2,187.00	21,280.00
Robeson County	6-6492-00	6,205.00	60,388.00
Rockingham County	6-6494-00	4,653.00	45,284.00
Rutherford County	6-6498-00	2,624.00	25,540.00
Sampson County	6-6500-00	3,160.00	30,757.00
Scotland County	6-6502-00	1,571.00	15,287.00
Stokes County	6-6506-00	1,760.00	17,128.00
Surry County	6-6508-00	2,710.00	26,376.00
Vance County	6-6518-00	2,129.00	20,718.00
Wake County	6-6520-00	10,501.00	102,204.00
Wayne County	6-6530-00	3,654.00	35,564.00
Wilkes County	6-6532-00	2,090.00	20,337.00
Wilson County	6-6534-00	4,953.00	48,204.00
State Set-Aside Committee, NC	6-6540-00	.00	436,412.00
		178,132.00	2,170,074.00
North Dakota:			
Grand Forks County County	6-6596-00	1,909.00	18,588.00
Stark County	6-6652-00	1,690.00	16,458.00
Williams County	6-6668-00	2,407.00	23,440.00
State Selection Committee, ND	6-6670-00	13,994.00	191,514.00
		20,000.00	250,000.00
Ohio:			
Columbus/Fairfield, Franklin Countie	6-6672-00	47,510.00	462,404.00
Adams County	6-6678-00	2,029.00	19,744.00
Ashtabula County	6-6684-00	8,773.00	85,380.00
Athens County	6-6686-00	2,976.00	28,962.00
Belmont County	6-6690-00	6,014.00	58,533.00
Brown County	6-6692-00	2,338.00	22,756.00
Butler County	6-6694-00	15,420.00	150,073.00
Carroll County	6-6698-00	1,902.00	18,512.00
Clark County	6-6702-00	7,488.00	72,877.00
Clinton County	6-6708-00	2,191.00	21,326.00
Columbiana County	6-6710-00	7,361.00	71,645.00
Coshocton County	6-6712-00	2,646.00	25,752.00
Crawford County	6-6714-00	3,781.00	36,796.00
Cuyahoga County	6-6716-00	80,643.00	784,865.00
Defiance County	6-6730-00	2,838.00	27,623.00
Fayette County	6-6740-00	1,943.00	18,907.00
Fulton County	6-6746-00	3,268.00	31,807.00
Gallia County	6-6748-00	2,080.00	20,246.00
Guernsey County	6-6754-00	3,413.00	33,221.00
Hamilton County	6-6756-00	43,193.00	420,375.00
Hardin County	6-6762-00	1,922.00	18,710.00
Henry County	6-6766-00	2,019.00	19,653.00
Highland County	6-6768-00	2,543.00	24,749.00
Hocking County	6-6770-00	1,833.00	17,843.00
Huron County	6-6774-00	5,128.00	49,908.00
Jackson County	6-6776-00	2,626.00	25,555.00
Jefferson County	6-6778-00	4,486.00	43,656.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Knox County	6-6780-00	3,240.00	31,533.00
Lawrence County	6-6784-00	3,813.00	37,115.00
Logan County	6-6788-00	2,480.00	24,140.00
Lorain County	6-6790-00	19,725.00	191,980.00
Lucas County	6-6796-00	30,053.00	301,257.00
Mahoning County	6-6802-00	18,309.00	178,199.00
Marion County	6-6806-00	4,703.00	45,770.00
Meigs County	6-6810-00	1,635.00	15,911.00
Monroe County	6-6816-00	1,607.00	15,637.00
Montgomery County	6-6818-00	28,104.00	273,527.00
Morrow County	6-6826-00	1,758.00	17,113.00
Muskingum County	6-6828-00	6,745.00	65,651.00
Ottawa County	6-6832-00	3,241.00	31,548.00
Perry County	6-6836-00	3,013.00	29,327.00
Pike County	6-6840-00	2,102.00	20,459.00
Putnam County	6-6846-00	2,243.00	21,828.00
Richland County	6-6848-00	9,093.00	88,498.00
Ross County	6-6852-00	5,233.00	50,927.00
Sandusky County	6-6854-00	4,692.00	45,664.00
Scioto County	6-6856-00	5,972.00	58,122.00
Seneca County	6-6858-00	4,315.00	41,998.00
Stark County	6-6862-00	27,148.00	264,218.00
Summit County	6-6866-00	30,397.00	295,842.00
Trumbull County	6-6870-00	18,525.00	180,298.00
Tuscarawas County	6-6874-00	6,742.00	65,621.00
Washington County	6-6884-00	5,278.00	51,368.00
State Set-Aside Committee, OH	6-6894-00	.00	768,788.00
		519,430.00	5,824,217.00
Oklahoma:			
Oklahoma City/Canadian, McLain, OK	6-6896-00	53,578.00	521,453.00
Tulsa/Osage, Tulsa	6-6897-00	36,437.00	354,617.00
Beckham County	6-6910-00	1,958.00	19,060.00
Bryan County	6-6914-00	1,666.00	16,215.00
Caddo County	6-6916-00	2,222.00	21,630.00
Carter County	6-6922-00	3,623.00	35,259.00
Cherokee County	6-6924-00	2,521.00	24,536.00
Comanche County	6-6938-00	3,895.00	37,906.00
Creek County	6-6946-00	5,503.00	53,558.00
Custer County	6-6948-00	1,616.00	15,728.00
Delaware County	6-6950-00	1,636.00	15,926.00
Garvin County	6-6960-00	2,215.00	21,554.00
Grady County	6-6962-00	3,224.00	31,381.00
Le Flore County	6-6990-00	2,679.00	26,072.00
Lincoln County	6-6992-00	2,297.00	22,360.00
McCurtain County	6-7002-00	2,668.00	25,965.00
Mayes County	6-7010-00	2,688.00	26,163.00
Muskogee County	6-7014-00	4,545.00	44,234.00
Okmulgee County	6-7028-00	2,705.00	26,331.00
Ottawa County	6-7034-00	4,396.00	42,789.00
Payne County	6-7038-00	2,884.00	28,065.00
Pittsburg County	6-7040-00	3,387.00	32,963.00
Pontotoc County	6-7042-00	2,257.00	21,965.00
Rogers County	6-7052-00	4,250.00	41,359.00
Seminole County	6-7054-00	2,612.00	25,418.00
Sequoyah County	6-7056-00	2,057.00	20,018.00
Stephens County	6-7058-00	4,434.00	43,154.00
Wagoner County	6-7068-00	2,702.00	26,300.00
Woodward County	6-7067-00	2,001.00	29,470.00
State Set-Aside Committee, OK	6-7078-00	.00	219,343.00
		168,656.00	1,860,792.00
Oregon:			
Portland/Clackamas, Multnomah, Washing	6-7080-00	58,152.00	565,976.00
Salem/Marion, Polk Counties	6-7082-00	14,671.00	142,787.00
Benton County	6-7090-00	2,366.00	23,030.00
Clatsop County	6-7096-00	2,065.00	20,094.00
Columbia County	6-7098-00	2,337.00	22,741.00
Coos County	6-7100-00	3,929.00	38,241.00
Deschutes County	6-7106-00	5,031.00	48,965.00
Douglas County	6-7108-00	5,859.00	57,027.00
Jackson County	6-7118-00	7,850.00	76,406.00
Josephine County	6-7122-00	3,243.00	31,563.00
Kalamath County	6-7124-00	3,831.00	37,283.00
Lane County	6-7128-00	14,832.00	144,354.00
Lincoln County	6-7132-00	2,182.00	21,235.00
Linn County	6-7134-00	6,347.00	61,772.00
Malheur County	6-7136-00	1,890.00	18,390.00
Umatilla County	6-7156-00	5,337.00	51,946.00
Union County	6-7158-00	1,594.00	15,515.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Wasco County	6-7162-00	1,894.00	18,436.00
State Set-Aside Committee, OR	6-7172-00	.00	76,763.00
		143,410.00	1,472,524.00
Pennsylvania:			
Bethlehem/Northampton, Lehigh Cnty	6-7174-00	22,839.00	222,280.00
Allegheny County	6-7180-00	64,239.00	625,209.00
Armstrong County	6-7184-00	4,701.00	45,755.00
Beaver County	6-7186-00	10,571.00	102,888.00
Bedford County	6-7188-00	2,857.00	27,806.00
Berks County	6-7190-00	13,605.00	132,413.00
Blair County	6-7194-00	7,236.00	70,428.00
Bradford County	6-7198-00	2,682.00	26,102.00
Centre County	6-7214-00	4,803.00	46,744.00
Clarion County	6-7218-00	2,623.00	25,524.00
Clearfield County	6-7220-00	5,737.00	55,840.00
Clinton County	6-7222-00	1,827.00	17,782.00
Columbia County	6-7224-00	3,654.00	35,564.00
Crawford County	6-7226-00	5,514.00	53,665.00
Dauphin County	6-7230-00	8,306.00	80,847.00
Erie County	6-7242-00	16,069.00	156,384.00
Fayette County	6-7246-00	9,965.00	96,986.00
Greene County	6-7254-00	2,769.00	26,954.00
Huntingdon County	6-7256-00	2,876.00	27,989.00
Indiana County	6-7258-00	5,706.00	55,536.00
Jefferson County	6-7260-00	2,951.00	28,719.00
Lackawanna County	6-7264-00	11,228.00	109,277.00
Lancaster County	6-7268-00	9,260.00	90,126.00
Mifflin County	6-7290-00	2,648.00	25,768.00
Northumberland County	6-7306-00	5,067.00	49,315.00
Philadelphia City/County	6-7310-00	71,687.00	697,705.00
Somerset County	6-7320-00	4,664.00	45,390.00
Susquehanna County	6-7324-00	2,202.00	21,432.00
Tioga County	6-7326-00	1,930.00	18,786.00
Venango County	6-7330-00	3,774.00	36,735.00
Wayne County	6-7336-00	1,735.00	16,884.00
State Set-Aside Committee, PA	6-7344-00	.00	1,259,483.00
		315,725.00	4,332,316.00
Rhode Island:			
Providence County	6-7354-00	20,502.00	199,540.00
State Set-Aside Committee, RI	6-7368-00	.00	66,511.00
		20,502.00	266,051.00
South Carolina:			
Abbeville County	6-7370-00	1,564.00	15,226.00
Aiken County	6-7372-00	4,765.00	46,379.00
Anderson County	6-7376-00	7,242.00	70,488.00
Beaufort County	6-7382-00	2,399.00	23,349.00
Berkeley County	6-7384-00	3,587.00	34,910.00
Charleston County	6-7388-00	10,884.00	105,930.00
Cherokee County	6-7394-00	2,177.00	21,189.00
Chester County	6-7396-00	2,011.00	19,577.00
Chesterfield County	6-7398-00	1,990.00	19,364.00
Clarendon County	6-7400-00	1,821.00	17,721.00
Colleton County	6-7402-00	2,111.00	20,550.00
Darlington County	6-7404-00	3,653.00	35,548.00
Dillion County	6-7406-00	1,865.00	18,147.00
Dorchester County	6-7408-00	2,058.00	20,033.00
Florence County	6-7414-00	5,994.00	58,335.00
Georgetown County	6-7416-00	3,390.00	32,993.00
Greenville County	6-7418-00	11,686.00	113,734.00
Greenwood County	6-7422-00	3,410.00	33,190.00
Horry County	6-7426-00	7,800.00	75,919.00
Kershaw County	6-7430-00	2,007.00	19,531.00
Lancaster County	6-7432-00	3,304.00	32,156.00
Laurens County	6-7434-00	2,648.00	25,768.00
Marion County	6-7442-00	2,368.00	23,045.00
Marlboro County	6-7444-00	1,907.00	18,558.00
Newberry County	6-7446-00	1,632.00	15,880.00
Oconee County	6-7448-00	3,009.00	29,281.00
Orangeburg County	6-7450-00	5,256.00	51,155.00
Richland County	6-7454-00	9,196.00	89,502.00
Spartanburg County	6-7460-00	9,895.00	96,302.00
Sumter County	6-7462-00	4,332.00	42,165.00
Union County	6-7464-00	1,955.00	19,029.00
Williamsburg County	6-7466-00	2,219.00	21,600.00
York County	6-7468-00	5,206.00	50,668.00
State Set-Aside Committee, SC	6-7470-00	.00	103,449.00
		135,341.00	1,420,671.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
South Dakota:			
Pennington County	6-7580-00	2,554.00	24,870.00
State Selection Committee, SD	6-7614-00	17,446.00	225,130.00
		20,000.00	250,000.00
Tennessee:			
Anderson County	6-7616-00	3,502.00	34,088.00
Bedford County	6-7618-00	1,930.00	18,786.00
Blount County	6-7624-00	5,176.00	50,379.00
Bradley County	6-7626-00	4,200.00	40,872.00
Campbell County	6-7628-00	3,210.00	31,244.00
Carroll County	6-7632-00	2,393.00	23,288.00
Carter County	6-7634-00	3,568.00	34,727.00
Cocke County	6-7644-00	3,488.00	33,951.00
Coffee County	6-7646-00	2,283.00	22,223.00
Cumberland County	6-7650-00	2,021.00	19,668.00
Davidson County	6-7652-00	18,281.00	177,925.00
Dickson County	6-7660-00	1,715.00	16,687.00
Dyer County	6-7662-00	2,312.00	22,497.00
Franklin County	6-7668-00	1,671.00	16,261.00
Gibson County	6-7670-00	4,126.00	40,157.00
Giles County	6-7672-00	1,868.00	18,177.00
Greene County	6-7676-00	5,209.00	50,699.00
Hamblen County	6-7680-00	3,901.00	37,967.00
Hamilton County	6-7682-00	13,390.00	130,214.00
Hardeman County	6-7688-00	1,625.00	15,820.00
Hardin County	6-7690-00	1,815.00	17,660.00
Hawkins County	6-7692-00	2,499.00	24,323.00
Haywood County	6-7694-00	1,800.00	17,523.00
Henderson County	6-7696-00	2,121.00	20,642.00
Henry County	6-7698-00	2,743.00	26,696.00
Jefferson County	6-7708-00	2,377.00	23,136.00
Knox County	6-7712-00	14,368.00	139,836.00
Lawrence County	6-7720-00	3,964.00	38,575.00
Lincoln County	6-7724-00	1,579.00	15,363.00
Loudon County	6-7726-00	1,935.00	18,831.00
Mc Minn County	6-7728-00	2,779.00	27,045.00
Mc Nairy County	6-7730-00	2,327.00	22,649.00
Madison County	6-7734-00	5,108.00	49,710.00
Marion County	6-7738-00	2,013.00	19,592.00
Maury County	6-7742-00	3,213.00	31,274.00
Monroe County	6-7746-00	2,490.00	24,231.00
Montgomery County	6-7748-00	4,043.00	39,351.00
Obion County	6-7756-00	1,838.00	17,888.00
Putnam County	6-7766-00	3,179.00	30,939.00
Rhea County	6-7768-00	1,722.00	16,763.00
Roane County	6-7770-00	2,999.00	29,160.00
Robertson County	6-7772-00	2,191.00	21,326.00
Rutherford County	6-7774-00	4,429.00	43,108.00
Scott County	6-7776-00	2,382.00	23,182.00
Sevier County	6-7780-00	5,106.00	49,695.00
Shelby County	6-7782-00	38,465.00	374,362.00
Sullivan County	6-7790-00	7,346.00	71,492.00
Tipton County	6-7794-00	2,227.00	21,676.00
Warren County	6-7804-00	2,766.00	26,924.00
Washington County	6-7806-00	4,843.00	47,139.00
White County	6-7812-00	1,622.00	15,789.00
State Set-Aside Committee, TN	6-7818-00	00	278,535.00
		224,155.00	2,460,145.00
Texas:			
Abilene/Jones, Taylor Counties	6-7820-00	9,274.00	90,263.00
Austin/Travis, Williamson Counties	6-7824-00	38,223.00	272,004.00
Dallas/Collin, Dallas, Denton Counties	6-7826-00	126,759.00	1,233,700.00
Houston/Fort Bend, Harris Counties	6-7828-00	244,390.00	2,378,567.00
Longview/Greeg, Harrison Counties	6-7830-00	13,334.00	149,237.00
Amarillo/Potter, Randall Counties	6-7822-00	10,348.00	100,713.00
Anderson County	6-7856-00	3,695.00	35,959.00
Angelina County	6-7860-00	5,689.00	55,369.00
Atascosa County	6-7868-00	1,785.00	17,371.00
Austin County	6-7870-00	1,621.00	15,774.00
Bastrop County	6-7876-00	1,915.00	18,634.00
Bee County	6-7880-00	2,077.00	20,216.00
Bell County	6-7882-00	9,203.00	89,563.00
Bexar County	6-7886-00	67,414.00	656,118.00
Bowie County	6-7896-00	5,339.00	51,961.00
Brazoria County	6-7900-00	13,813.00	134,436.00
Brazos County	6-7902-00	5,865.00	57,087.00
Brown County	6-7912-00	2,424.00	23,592.00
Calhoun County	6-7920-00	1,938.00	18,862.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Cameron County	6-7924-00	22,896.00	222,843.00
Cass County	6-7934-00	3,621.00	35,244.00
Cherokee County	6-7940-00	2,777.00	27,030.00
Cooke County	6-7970-00	1,775.00	17,280.00
Coryell County	6-7972-00	2,018.00	19,638.00
Dawson County	6-8002-00	1,693.00	16,474.00
Duval County	6-8024-00	1,607.00	15,637.00
Ector County	6-8028-00	14,590.00	141,996.00
Ellis County	6-8034-00	5,392.00	52,478.00
El Paso County	6-8036-00	41,189.00	400,874.00
Fannin County	6-8044-00	1,633.00	15,896.00
Galveston County	6-8066-00	18,928.00	184,222.00
Gray County	6-8080-00	2,243.00	21,828.00
Guadalupe County	6-8092-00	2,443.00	23,775.00
Hale County	6-8094-00	2,147.00	20,900.00
Hardin County	6-8104-00	4,925.00	47,930.00
Hays County	6-8122-00	3,023.00	29,418.00
Henderson County	6-8126-00	3,848.00	37,450.00
Hidalgo County	6-8128-00	43,749.00	425,790.00
Hill County	6-8132-00	1,672.00	16,276.00
Hockley County	6-8134-00	1,933.00	18,816.00
Hopkins County	6-8138-00	2,473.00	24,064.00
Howard County	6-8142-00	2,665.00	25,935.00
Hunt County	6-8146-00	4,048.00	39,397.00
Jasper County	6-8158-00	3,406.00	33,145.00
Jefferson County	6-8162-00	20,740.00	201,852.00
Jim Wells County	6-8170-00	5,086.00	49,497.00
Kaufman County	6-8180-00	2,376.00	23,121.00
Kleberg County	6-8196-00	2,480.00	24,140.00
Lamar County	6-8200-00	2,773.00	26,985.00
Liberty County	6-8214-00	5,150.00	50,121.00
Lubbock County	6-8226-00	11,515.00	112,076.00
Mc Lennan County	6-8234-00	11,684.00	113,718.00
Matagorda County	6-8248-00	4,393.00	42,758.00
Maverick County	6-8250-00	6,095.00	59,323.00
Midland County	6-8256-00	9,206.00	89,594.00
Milam County	6-8260-00	1,627.00	15,835.00
Montgomery County	6-8268-00	12,152.00	118,267.00
Morris County	6-8272-00	2,755.00	26,817.00
Nacogdoches County	6-8276-00	3,257.00	31,700.00
Navarro County	6-8278-00	3,224.00	31,381.00
Nueces County	6-8284-00	26,651.00	259,380.00
Orange County	6-8292-00	9,765.00	95,039.00
Palo Pinto County	6-8294-00	1,916.00	18,649.00
Polk County	6-8304-00	1,944.00	18,923.00
Reeves County	6-8324-00	1,830.00	17,812.00
Rusk County	6-8336-00	3,227.00	31,411.00
San Patricio County	6-8344-00	6,248.00	60,814.00
Shelby County	6-8354-00	1,608.00	15,652.00
Smith County	6-8358-00	11,244.00	109,429.00
Starr County	6-8364-00	8,971.00	87,312.00
Tarrant County	6-8376-00	65,040.00	633,012.00
Titus County	6-8402-00	2,130.00	20,733.00
Tom Green County	6-8404-00	5,139.00	50,014.00
Upshur County	6-8416-00	3,295.00	32,065.00
Uvalde County	6-8420-00	2,224.00	21,645.00
Val Verde County	6-8422-00	4,134.00	40,234.00
Van Zandt County	6-8424-00	2,008.00	19,546.00
Victoria County	6-8426-00	6,266.00	60,981.00
Walker County	6-8430-00	2,144.00	20,870.00
Webb County	6-8438-00	11,978.00	116,578.00
Wharton County	6-8442-00	3,520.00	34,255.00
Wichita County	6-8446-00	7,559.00	73,957.00
Willacy County	6-8452-00	2,201.00	21,417.00
Wood County	6-8464-00	1,650.00	16,063.00
Zavala County	6-8472-00	2,165.00	21,067.00
State Set-Aside Committee, TX	6-8474-00	.00	646,541.00
		1,063,210.00	10,994,346.00
Utah:			
Cache County	6-8480-00	2,074.00	20,185.00
Salt Lake County	6-8510-00	29,831.00	290,335.00
Unitah County	6-8526-00	1,802.00	17,538.00
Utah County	6-8528-00	11,056.00	107,604.00
Weber County	6-8540-00	7,902.00	76,908.00
State Set-Aside Committee, UT	6-8544-00	.00	121,408.00
		52,665.00	633,978.00
Vermont:			
Franklin County	6-8558-00	1,760.00	17,143.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub L. 100-71	Pub. L. 100-120
Rutland County	6-8568-00	2,113.00	20,581.00
Washington County	6-8570-00	1,876.00	18,269.00
Windham County	6-8572-00	1,904.00	18,542.00
State Selection Committee, VT	6-8576-00	12,347.00	175,465.00
		20,000.00	250,000.00
Virginia:			
Accomack County	6-8584-00	1,663.00	16,184.00
Buchanan County	6-8610-00	3,790.00	36,887.00
Carroll County	6-8618-00	1,611.00	15,683.00
Dickenson County	6-8634-00	1,658.00	16,139.00
Halifax County	6-8664-00	1,755.00	17,082.00
Lee County	6-8686-00	1,761.00	17,143.00
Mecklenburg County	6-8698-00	1,580.00	15,378.00
Montgomery County	6-8702-00	3,190.00	31,046.00
Pittsylvania County	6-8720-00	3,824.00	37,222.00
Pulaski County	6-8730-00	2,161.00	21,037.00
Russell County	6-8742-00	2,998.00	29,175.00
Smyth County	6-8748-00	2,202.00	21,433.00
Tazewell County	6-8760-00	4,637.00	45,131.00
Washington County	6-8764-00	2,024.00	19,698.00
Wise County	6-8768-00	3,471.00	33,784.00
Wythe County	6-8770-00	1,788.00	17,402.00
Chesapeake City	6-8784-00	4,765.00	46,379.00
Danville City	6-8792-00	2,868.00	27,912.00
Hampton City	6-8806-00	5,509.00	53,619.00
Lynchburg City	6-8814-00	3,046.00	29,647.00
Newport News City	6-8822-00	6,786.00	66,047.00
Norfolk City	6-8824-00	7,908.00	76,968.00
Petersburg City	6-8828-00	2,397.00	23,334.00
Portsmouth City	6-8832-00	5,916.00	57,574.00
Richmond City	6-8836-00	9,262.00	90,141.00
Roanoke City	6-8838-00	4,675.00	45,497.00
Suffolk City	6-8846-00	2,757.00	26,832.00
State Set-aside Committee, VA	6-8856-00	.00	737,942.00
		96,002.00	1,672,316.00
Washington:			
Benton County	6-8862-00	8,208.00	79,889.00
Chelan County	6-8864-00	5,320.00	51,779.00
Clallam County	6-8866-00	3,412.00	33,206.00
Cowlitz County	6-8872-00	5,801.00	56,464.00
Douglas County	6-8874-00	2,040.00	19,851.00
Franklin County	6-8878-00	3,013.00	29,327.00
Grant County	6-8882-00	4,673.00	45,481.00
Grays Harbor County	6-8884-00	4,990.00	48,569.00
King County	6-8890-00	75,822.00	737,938.00
Kittitas County	6-8898-00	1,930.00	18,786.00
Klickitat County	6-8900-00	2,224.00	21,645.00
Lewis County	6-8902-00	4,415.00	42,971.00
Mason County	6-8906-00	1,905.00	18,542.00
Okanogan County	6-8908-00	3,490.00	33,966.00
Pierce County	6-8914-00	31,724.00	308,756.00
Skagit County	6-8920-00	6,248.00	60,814.00
Snohomish County	6-8924-00	22,944.00	223,300.00
Spokane County	6-8928-00	20,954.00	203,936.00
Stevens County	6-8932-00	2,310.00	22,482.00
Walla Walla County	6-8938-00	3,638.00	35,412.00
Whatcom County	6-8940-00	7,909.00	76,968.00
Yakima County	6-8944-00	18,147.00	176,617.00
State Set-aside Committee, WA	6-8948-00	.00	244,991.00
		241,117.00	2,591,690.00
West Virgina:			
Huntington/Wayne, Cabell Counties	6-8950-00	7,635.00	74,306.00
Barbour County	6-8954-00	1,569.00	15,272.00
Berkeley County	6-8956-00	2,558.00	24,901.00
Boon County	6-8958-00	1,835.00	17,858.00
Fayette County	6-8974-00	3,785.00	36,841.00
Greenbrier County	6-8980-00	3,076.00	29,936.00
Harrison County	6-8988-00	4,615.00	44,919.00
Jackson County	6-8990-00	2,152.00	20,946.00
Kanawha County	6-8994-00	13,163.00	128,108.00
Lewis County	6-8998-00	1,974.00	19,212.00
Lincoln County	6-9000-00	1,818.00	17,691.00
Logan County	6-9002-00	3,985.00	38,788.00
McDowell County	6-9004-00	4,489.00	43,686.00
Marion County	6-9006-00	4,046.00	39,382.00
Marshall County	6-9008-00	2,935.00	28,567.00
Mason County	6-9010-00	2,194.00	21,356.00
Mercer County	6-9012-00	4,548.00	44,264.00

EMERGENCY FOOD AND SHELTER PROGRAM ALLOCATIONS—Continued

		Pub. L. 100-71	Pub. L. 100-120
Mineral County	6-9014-00	1,761.00	17,143.00
Mingo County	6-9016-00	2,363.00	22,999.00
Monongalia County	6-9018-00	2,737.00	26,635.00
Nicholas County	6-9024-00	2,340.00	22,771.00
Ohio County	6-9026-00	2,830.00	27,547.00
Preston County	6-9034-00	2,530.00	24,627.00
Putnam County	6-9036-00	2,746.00	26,726.00
Raleigh County	6-9038-00	6,703.00	65,241.00
Randolph County	6-9040-00	2,568.00	24,992.00
Upshur County	6-9054-00	2,218.00	21,584.00
Wetzel County	6-9062-00	2,268.00	22,071.00
Wood County	6-9066-00	6,169.00	60,038.00
Wyoming County	6-9068-00	2,657.00	25,859.00
State Set-aside Committee, WV	6-9070-00	.00	125,595.00
		1062,67.00	1,159,861.00
Wisconsin:			
Appleton/Calumet, Outagamie	6-9071-00	9,564.00	93,077.00
Eau Claire/Chippewa, Eau Claire Count	6-9072-00	6,881.00	66,975.00
Barron County	6-9100-00	2,341.00	22,786.00
Clark County	6-9120-00	2,076.00	20,200.00
Columbia County	6-9122-00	3,462.00	33,693.00
Dane County	6-9126-00	13,497.00	131,363.00
Douglas County	6-9134-00	2,483.00	24,171.00
Dunn County	6-9136-00	1,894.00	18,436.00
Grant County	6-9148-00	2,554.00	24,855.00
Kenosha County	6-9164-00	7,840.00	76,299.00
Milwaukee County	6-9190-00	46,099.00	448,668.00
Oconto County	6-9200-00	1,702.00	16,565.00
Portage County	6-9216-00	3,599.00	35,031.00
Racine County	6-9220-00	10,368.00	100,911.00
Rock County	6-9226-00	9,404.00	91,525.00
Taylor County	6-9242-00	1,633.00	15,896.00
Trempealeau County	6-9244-00	1,841.00	17,919.00
State Set-Aside Committee, WI	6-9272-00	.00	715,010.00
		127,238.00	1,953,380.00
Wyoming:			
Campbell County	6-9280-00	2,644.00	25,752.00
Fremont County	6-9288-00	2,787.00	27,137.00
Natrona County	6-9302-00	5,778.00	56,266.00
Sweetwater County	6-9316-00	3,583.00	34,894.00
Uinta County	6-9320-00	2,168.00	21,113.00
State Selection Committee, WY	6-9326-00	3,040.00	103,070.00
		20,000.00	268,232.00
American Samoa	6-9328-00	5,949.00	66,060.00
		5,949.00	66,060.00
Guam	6-9330-00	5,649.00	62,730.00
		5,649.00	62,730.00
No. Mariana Islands	6-9332-00	3,549.00	39,414.00
		3,549.00	39,414.00
Puerto Rico	6-9334-00	161,056.00	1,567,493.00
		161,056.00	1,567,493.00
Trust Territories	6-9338-00	19,904.00	221,021.00
		19,904.00	221,021.00
Virgin Islands	6-9340-00	7,799.00	86,600.00
		7,799.00	86,600.00

Dennis Kwiatkowski,

Chairman, Emergency Food and Shelter National Board.

[FR Doc. 88-4339 Filed 3-3-88; 8:45 am]

BILLING CODE 6718-02-M

Office of Training, Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: Changed from February 22-24, 1988 to April 25-27, 1988.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

Time: April 25—7:00 p.m. to 9:00 p.m.; April 26—8:30 a.m. to 5:00 p.m.; April 27—8:30 a.m. to Agenda Completion.

Proposed Agenda: Calendar Year 1988 Appointments to the Board; 1987 Annual Report.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of

Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1251) on or before April 11, 1988.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

John B. K. La Barre,

Director, Office of Training.

Dated: February 23, 1988.

[FR Doc. 88–4700 Filed 3–3–88; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal 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.: 224–011049–001.

Title: Tampa Port Terminal Agreement.

Parties:

Tampa Port Authority

Seagull Terminal and Stevedoring Company.

Synopsis: the proposed agreement provides for an extension of FMC Agreement No. 224–011049, from March 1, 1988 to July 1, 1988.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 29, 1988.

[FR Doc. 88–4757 Filed 3–3–88; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–010640–002.

Title: ARMADA/GLTL East Africa Service.

Parties:

Armada Great Lakes/East Africa Service, Ltd.

Great Lakes Transcaribbean Line, Ltd. ("GLTL")

Synopsis: The proposed amendment would substitute GLTL as a party to the agreement in place of Great Lakes Transcaribbean Line GmbH, extend the minimum term of the agreement for 12 months and make certain other non-substantive changes. It would also restate the agreement to incorporate these changes. The parties have requested a shortened review period.

Agreement No.: 203–011173.

Title: Eastern Mediterranean Cooperation Agreement (II)

Parties:

The United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference

Nordana Line AS

Synopsis: The proposed agreement would permit the parties to discuss and reach agreement on rates, charges, rules, regulations and service contracts for cargo moving in the trade from U.S. Atlantic, Gulf and Great Lakes ports including cargo moving from inland and coastal points via such ports to ports on the Mediterranean Sea (except ports in Italy, France, Spain and Israel), on the Sea of Marmara and the Black Sea (except Romania) and on the Atlantic Coast of Morocco and to all points in Europe and in all countries bordering the Mediterranean Sea (except points in Italy, France, Spain, Romania, Portugal and Israel) and the Sea of Marmara. The agreement would remain in effect for a period of 90 days. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 1, 1988.

[FR Doc. 88–4758 Filed 3–3–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

February 26, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202–452–3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202–395–7340)

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Domestic Branch Application.
Agency form number: FR 4001.
OMB Docket number: 7100–0097.
Frequency: On occasion.
Reporters: State member banks.
Annual reporting hours: 95.
Small business are affected.
General description of the report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Whenever a state member bank wishes to establish a domestic branch, it must receive the approval of the Federal Reserve by filing a domestic branch application, which is in the form of a letter addressed to the appropriate Federal Reserve Bank.

2. *Report title:* Investment in Bank Premises Application.
Agency form number: FR 4014.
OMB docket number: 7100–0139.

Frequency: On occasion.
Reporters: State member banks.
Annual reporting hours: 50.
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 371d) and is not given confidential treatment.

Whenever a new investment in bank premises by a state member bank causes that bank's total dollar investment in bank premises to exceed 100 percent of the bank's capital stock account, the bank is required to send an application to the appropriate Reserve Bank requesting permission from the Federal Reserve to proceed.

3. *Report title:* Application to Issue Capital Notes.
Agency form number: FR 4015.
OMB docket number: 7100–0140.
Frequency: On occasion.
Reporters: State member banks.
Annual reporting hours: 25.
Small business are affected.
General description of report: This information collection is mandatory 12 U.S.C. 461 and 12 CFR 204.2(a)(1)(vii)(c) and is not given confidential treatment.

Whenever a state member bank wishes to issue capital notes, it is required to file a letter-form application with the appropriate Reserve Bank asking for approval from the Federal Reserve.

Board of Governors of the Federal Reserve System, February 26, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–4701 Filed 3–3–88; 8:45 am]

BILLING CODE 6210–01–M

Agency Forms Under Review

February 26, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approval collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.** ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addresed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steel—Division of research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal to approve under OMB delegated authority the extension without revision of the following report:

1. *Report title:* Annual Report on Status of Disposition of Assets Acquired in Satisfaction of Debt Previously Contracted.
Agency form number: FR 4006.
OMB Docket number: 7100–0129.
Frequency: Annual.
Reporters: Bank holding companies.
Annual reporting hours: 3000.
Small businesses are not affected.
General description of report: This report is required by law (12 U.S.C. 1843(c)(2), 1844(b)). Certain portions may be given confidential treatment at applicant's request (5 U.S.C. 552(b)(4)).

Bank holding companies that acquire assets in satisfaction of debts previously contracted are required to submit an annual report to the Board outlining the efforts made to date to effect divestiture of the assets, a description and valuation of assets divested and those to be divested. The report provides supervisory information needed to monitor compliance with prudent banking practices.

Board of Governors of the Federal Reserve System, February 26, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–4702 Filed 3–3–88; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Diane M. Bricco et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considerd in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the officies of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 21, 1988.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Diane M. Bricco,* to acquire 4.6 percent; Lawrence J. Gentine, to acquire 2.3 percent; Thomas J. Grasse, to acquire 11.3 percent; C. Reed Harvey, to acquire 5.7 percent; Michael J. Harvey, to acquire 11.3 percent; Anthony L. Jovanovich, to acquire 5.7 percent; Larry LeMahieu, to acquire 3.4 percent; Walter H. Miller, Jr., to acquire 2.3 percent; D. Tod Pauly, to acquire 11.3 percent; Charles E. Rohde, to acquire 4.6 percent; Schabo Materials, Inc.,—William D. Murphy, to acquire 22.7 percent; Larry Van Akkeren, to acquire 3.4 percent; Gordon Veldboom, Jr., to acquire 5.7 percent; and Neil H. VanDerJagt and Don G. VanDerJagt to acquire 5.7 percent of the voting shares of Cameron Investment Company, Inc., Cameron, Wisconsin, and thereby indirectly

acquire Bank of Cameron, Cameron, Wisconsin.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John E. Kirkpatrick and the John E. Kirkpatrick Revocable Intervivos Trust,* both of Oklahoma City, Oklahoma, to acquire 38.16 percent; Eleanor B. Kirkpatrick and the Eleanor B. Kirkpatrick Revocable Intervivos Trust, both of Oklahoma City, Oklahoma, to acquire 38.16 percent; and Christian K. Keesee, Oklahoma City, Oklahoma, to acquire 12.43 percent of the voting shares of American Bancorp of Edmond, Inc., Edmond, Oklahoma, and thereby indirectly acquire American Bank and Trust Company, Edmond, Oklahoma.

2. *L. C. Neel,* Bixby, Oklahoma; to acquire 14.10 percent; Marc B. Wolin, Baxter Springs, Kansas, to acquire 0.60 percent; and Frank B. Sanders, Oologah, Oklahoma, to acquire 14.09 percent of the voting shares of American National Bancshares, Inc., Baxter Springs, Kansas, and thereby indirectly acquire American National Bank, Baxter Springs, Kansas.

3. *Alan W. Rolley,* Topeka, Kansas; to acquire an additional 5.3 percent of the voting shares of North Plaza Bancshares, Inc., Topeka, Kansas, and thereby indirectly acquire North Plaza State Bank, Topeka, Kansas.

Board of Governors of the Federal Reserve System, February 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-4703 Filed 3-3-88; 8:45 am]

BILLING CODE 6210-01-M

Citadel Bankshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225-23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citadel Bankshares, Inc.,* Wichita, Kansas; to engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-4704 Filed 3-3-88; 8:45 am]

BILLING CODE 6210-01-M

First Eastern Corp. et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1988.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Eastern Corporation,* Wilkes-Barre, Pennsylvania; to expand the geographic scope of Dolphin and Bradbury, Inc., Philadelphia, Pennsylvania, with regards to underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16), and providing financial advice to state and local governments, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4)(v) of the Board's Regulation Y from the Commonwealth of Pennsylvania to a nationwide basis.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Bank South Corporation,* Atlanta, Georgia; to acquire Financial Data Dimensions, Inc., Thomson, Georgia, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Georgia and states contiguous to Georgia.

Board of Governors of the Federal Reserve System, February 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-4705 Filed 3-3-88; 8:45 am]

BILLING CODE 6210-01-M

Montgomery Bancorp, et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Montgomery Bancorp*, Rocky Hill, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Montgomery National Bank, Rocky Hill, New Jersey.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Colony Bancshares, Inc.*, Alpharetta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Colony Bank, Alpharetta, Georgia. Comments on this application must be received by March 18, 1988.

2. *The First Corporation*, Opelika, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Opelika, Opelika, Alabama.

3. *First Sterling Bancshares, Inc.*, Winter Haven, Florida; to acquire 51 percent of the voting shares of First Sterling Bank of Osceloa County, Kissimmee, Florida, a de novo bank.

4. *Security Trustco, Inc.*, Brilliant, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Security Trust and Savings Bank, Brilliant, Alabama.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F & M Bancorporation, Inc.*, Kaukauna, Wisconsin; to acquire 80 percent of the voting shares of PTD Bancorp, Inc., Potosi, Wisconsin, and thereby indirectly acquire Potosi State Bank, Potosi, Wisconsin, and Darman Financial of Wisconsin, Inc., Verona, Wisconsin, and thereby indirectly acquire The First State Bank of Fennimore, Fennimore, Wisconsin. Comments on this application must be received by March 24, 1988.

2. *F & M Merger Corporation*, Kaukauna, Wisconsin; to acquire 97.33 percent of the voting shares of PTD Bancorp, Inc., Potosi, Wisconsin, and thereby indirectly acquire Potosi State Bank, Potosi, Wisconsin, and Darman Financial of Wisconsin, Inc., Verona, Wisconsin, and thereby indirectly acquire The First State Bank of Fennimore, Fennimore, Wisconsin. Comments on this application must be received by March 24, 1988.

3. *First Dubuque Corp.*, Dubuque, Iowa; to acquire 100 percent of the voting shares of Andrew Financial Corp., Bellevue, Iowa, and thereby indirectly acquire Andrew Savings Bank, Bellevue, Iowa. Comments on this application must be received by March 18, 1988.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Investors Bancorporation, Inc.*, Roberts, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Roberts Bancorporation, Inc., Roberts, Wisconsin, and thereby indirectly acquire State Bank, Roberts, Wisconsin, which indirectly engages in general insurance agency activities.

2. *Suburban Bancshares, Inc.*, Eden Prairie, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Suburban Bancorporation, Inc., Eden Prairie, Minnesota, and thereby indirectly acquire Suburban National Bank, Eden Prairie, Minnesota.

Board of Governors of the Federal Reserve System, February 29, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-4706 Filed 3-3-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 19, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. State Agency Budget List of Part-Time and Temporary Positions for SSA Disability Programs—0960-0403— The information collected by this form is used by SSA to budget funds for the operation of State Disability Determination Services. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Annual; Estimated Annual Burden: 54 hours.

2. State Agency Budget List of Full-Time Positions for Disability Determinations—0960-0404—The information collected by this form is used by SSA to budget funds for the operation of State Disability Determination Services. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: One-Time; Estimated Annual Burden: 54 hours.

3. State Agency Report of Obligations for SSA Disability Programs—0960-0421—The State agencies use these forms quarterly to report cumulative obligations, unliquidated obligations and total disbursements for each fiscal year. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: 4; Estimated Annual Burden: 216 hours.

4. State for Determining Continuing Eligibility for Supplemental Security Income Payments—0960-0416—The information collected by this form will be used by SSA to help determine if an individual who is currently receiving Supplemental Security Income Benefits should continue receiving those payments. Respondents: Individuals or households. Number of Respondents: 614,000; Frequency of Response:

Occasionally; Estimated Annual Burden: 122,800 hours.

5. State Agency Schedule for Equipment Purchases for SSA Disability Programs—0960–0406—The information is used to budget and account for equipment to be purchased or already purchased. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: One-time; Estimated Annual Burden: 54 hours.

OMB Desk Officer: Elaina Norden.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–1238 for copies of package)

1. MEQC Disposition List—0938–0173—The MEQC disposition list is a summary of State MEQC findings by case for positive reviews and negative case action reviews. Respondents: State or local governments. Number of Respondents: 55; Frequency of Response: Monthly; Estimated Annual Burden: 1,678 hours.

2. Attending Physicians Certification of Medical necessity for Home Oxygen—NEW—Medical documentation is required to be submitted to HCFA carriers to support the payment of claims for home use of oxygen. The form is completed by physicians and is used to document medical necessity. Respondents: Businesses or other for-profit. Number of Respondents: 600,000; Frequency of Response: Occasionally; Estimated Annual Burden: 150,000 hours.

3. Worksheet for Section 1867 of the Social Security Act—NEW—Under Section 1867 of the Social Security Act hospitals may continue to participate in Medicare only if they are not out of compliance with its provisions. This is a uniform instrument used to collect compliance information. Respondents: Individuals or households, Federal agencies or employees. Number of Respondents: 300; Frequency of Response: One-time; Estimated Annual burden: 610 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

1. Final Rule: State legalization Impact Assistance Grant—New—Rule implements Section 204 of Public Law 99–603, The Immigration Reform and Control Act (IRCA) of 1986 (the Act). The Act establishes State Legalization Impact Assistance Grants which are available to States for reimbursement of payments for costs incurred for providing public assistance, public health assistance and educational services to eligible legalized aliens. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Twice per year; Estimated Annual Burden: 10,800 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

Centers For Disease Control

1. 1989 National Health Interview Survey (Pretest)—NEW—The National Health Interview Survey, an ongoing survey of the civilian, noninstitutionalized population, monitors the Nation's health. The pretest of the 1989 NHIS will occur in June, 1988 and include supplements on Dental, Diabetes, Digestive Disorders, Health Insurance, Mental Health, and Immunization. Respondents: Individuals or households. Number of Respondents: 340; Frequency of Response: One-time; Estimated Annual Burden: 415 hours.

Assistant Secretary for Health

1. 1987 National Medical Expenditure Survey (medical Provider Survey; Patient-identified Physicians Survey; Health Insurance Plans Survey)—NEW—"Health surveys, health care costs, med. insurance" NMES will survey the med. providers physicians, health ins. suppliers, and employers of the civilian noninstitutionalized population sample and the sample of American Indians/Alaska natives providing nat'l. estimates of use and expenditures for health care and health insurance coverage to evaluate current and proposed health policy decisions. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 28,490; Frequency of Response: One-time; Estimated Annual Burden: 16,693 hours.

National Institutes of Health

1. Evaluation of NIH Extramural Shared Instrumentation Activities (Concept clearance)—NEW—No evaluation has yet been made of the effectiveness of the shared instrumentation mechanism as an approach to meeting the research instrumentation needs of biomedical research, or of the programs/activities through which it is/has been implemented. The otherwise unavailable data to be collected by the proposed survey responds to the expressed information needs of Congress the Department and NIH. Respondents: State or local governments, Non-profit institutions. Number of Respondents: —; Frequency of Response: One-time; Estimated Annual Burden: 1 hour.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100

FSA: 202–245–0652

SSA: 301–965–4149

HCFA: 301–594–1238

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer).

Dated: March 1, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–4756 Filed 3–3–88; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

School Water Fluoridation; Meeting

Action: Notice of Meeting—School Fluoridation Meeting. Federal and State public health officials who are involved in school water fluoridation will participate.

Time and Date: 8:30 a.m.–4:30 p.m., Monday and Tuesday, March 14–15, and 8:30 a.m.–12:00 p.m., Wednesday, March 16, 1988.

Place: Viscount Hotel, Atlanta, Georgia (404) 321–4174.

Status: Open to public for observation, limited only by the space available.

Matters to be Considered: The Dental Disease Prevention Activity, Center for Prevention Services, Centers for Disease Control (CDC), will convene this meeting of invited consultants to enable CDC to make sound recommendations for guidelines for school water fluoridation.

Contact Person for More Information: Thomas G. Reeves, P.E., Fluoridation Engineer, Dental Disease Prevention Activity, Freeway Park, Room 424, M.S. E–09, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, Telephones: FTS: 236–1833; Commercial: (404) 639–1833.

Dated: February 29, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-4697 Filed 3-3-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88N-0074]

Drug Export; Nimotop (Nimodipine) Capsules

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Miles, Inc., Pharmaceutical Division, has filed an application requesting approval for the export of the human drug NIMOTOP (nimodipine) Capsules to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Miles, Inc., Pharmaceutical Division, 400 Morgan Lane, West Haven, CT 06516, has filed an application requesting approval for the export of the drug NIMOTOP (nimodipine) Capsules, to Canada. This drug is indicated for use in the prevention and/or modification of neurological deficits following subarachnoid hemorrhage (SAH). The application was received and filed in the Center for Drug Evaluation and Research on February 3, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 14, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 24, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-4694 Filed 3-3-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0075]

Drug Export; Simvastatin Bulk

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck, Sharp & Dohme International has filed an application requesting approval for the export of the human drug Simvastatin Bulk to Sweden, France, and Italy.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck, Sharp & Dohme International, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, New Jersey 07065-0900, has filed an application requesting approval for the export of the drug Simvastatin Bulk to Sweden, France and Italy. This drug is for use in humans for the treatment of hypercholesterolemia. The application was received and filed in the Center for Drug Evaluation and Research on January 19, 1988 which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 14, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802,

Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 24, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–4695 Filed 3–3–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0076]

Drug Export; Sodium Aminosalicylate (4–ASA) Bulk

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Reed & Carnrick Pharmaceuticals has filed an application requesting approval for the export of the human drug Sodium Aminosalicylate (4–ASA) Bulk to the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Reed & Carnrick Pharmaceuticals, Piscataway, New Jersey 08854, has filed an application requesting approval for the export of the drug Sodium Aminosalicylate (4–ASA) Bulk to the United Kindgom. This drug is to be used in the treatment of mild to moderate ulcerative colitis and as adjunctive therapy in severe ulcerative colitis. The application was received and filed in the Center for Drug Evaluation and Research on February 16, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Mangement Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 14, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 24, 1988.

Daniel L. Michels

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88–4696 Filed 3–3–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Consensus Development Conference on Cochlear Implants

Notice is hereby given of the NIH Consensus Development Conference on "Cochlear Implants," sponsored by the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute on Aging, the National Institute of Child Health and Human Development, the Veterans Administration, the Food and Drug Administration, and the NIH Office of Medical Applications of Research. The Conference will be held May 2–4, 1988, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Since the development of cochlear implants in the 1960's, more than one thousand patients, both children and adults, have been implanted with a variety of devices. Controversy exists on several issues, including determination of appropriate candidates for implantation, selection of a single-electrode or mutli-electrode device, suitable pre-and post-implantation assessments, and rehabilitation procedures.

The purpose of the conference is to reach agreement on important issues in cochlear implantation. Key questions to be addressed are:

- Who is a suitable candidate for a cochlear implant?
- What are the advantages and disadvantages of the different types of cochlear implants?
- How effective are cochlear implants?
- What are the risks and limitations of cochlear implantation?
- What are the important directions for future research?

Speakers selected for the conference have been charged with presenting evidence pertinent to these questions. Ample time will be provided for participants attending the conference to interact with the speakers and to present contrasting points of view. The conference will be an open forum, designed to encourage such interaction. The goal will be to arrive at consensus regarding each of the questions.

The conference will bring together a wide variety of specialists in otolaryngology, auditory anatomy and phsiology, rehabilitative audiology, speech and language pathology, pediatric otolaryngology, psychophysics, and other relevant fields. On the first two days, experts will present current scientific thinking to address the questions stated above and concerned voluntary organizations will make statements. On the third day, after consideration of the evidence presented, the consensus panel will present a draft report and invite comments from the audience. The panel will then finalize the consensus statement for wide distribution to the biomedical and public communities.

Information on the program may be obtained from: Marti Bernstein, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468–MEET.

Dated: February 24, 1988.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 88-4714 Filed 3-3-88; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Advisory Committee Working Group on Transgenic Animals; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Working Group on Transgenic Animals at the National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville, Pike, Bethesda, Maryland 20892, on March 28, 1988, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to review guidelines for recombinant DNA experiments involving transgenic animals. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Working Group on Transgenic Animals, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770-0131.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Date: February 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-4715 Filed 3-3-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Eight Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) routinely announces in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies are needed, including long-term toxicology and carcinogenicity studies, will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement. Contact may be made by telephone or mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP in determining which chemicals require additional studies and in designing these studies.

1. *Acetone (67-64-1)*—14-day and 90-day dosed water studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Dennis Dietz, telephone 919-541-2272.

2. *t-Butyl alcohol (75-65-0)*—90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Robert Maronpot, telephone 919-541-4861.

3. *1,2-Dichloroethane (107-06-2)*—90-day dosed water studies in Fischer 344, Sprague Dawley, and Osborne Mendel rats and B6C3F$_1$ mice and 90-day gavage studies in Fischer 344 rats. Contact Person: Dr. Elmer Rauckman, telephone 919-541-7981.

4. *Isobutyl nitrite (542-56-3)*—14-day and 90-day inhalation studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Carlton D. Jackson, telephone 501-541-4553.

5. *3-Methyl-6-methoxy-2-amino-benyothiazolium chloride (NOCAS0884)*—14-day and 90-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice and 14-day gavage study in male Fischer 344 rats. Contact Person: Dr. Elmer Rauckman, telephone 919-541-7981.

6. *Phenolphthalein (77-09-8)*—90-day dosed feed study in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Dennis Dietz, telephone 919-541-2272.

7. *1,2,4,5-Tetrachlorobenzene (95-94-3)*—14-day and 90-day dosed feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Raymond Yang, telephone 919-541-2947.

8. *Tetrahydrofuran (109-99-9)*—90-day inhalation studies in Fisher 344 rats and B6C3F$_1$ mice. Contact Person: Dr. Raj Chhabra, telephone 919-541-3386.

Please submit all comments and suggestions on chemical(s) by telephone or by mail to the responsible scientists (listed above) within 30 days of publication of this notice. Any submission received after the above date will be accepted and utilized if possible.

Dated: February 26, 1988.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 88-4713 Filed 3-3-88; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Carcinogenesis Studies of Food Grade Geranyl; Acetate

The HHS' National Toxicology Program today announces the availabilty of the Technical Report describing the carcinogenesis studies of geranyl acetate, a colorless liquid prepared by fractional distillation of selected essential oils or by acetylation of geraniol. It is used primarily as a component of perfumes for creams and soaps and as a flavoring ingredient.

Carcinogenesis studies of food-grade geranyl acetate (containing 29% citronellyl acetate) were conducted by administering the test chemical in corn oil by gavage to groups of 50 male and 50 female F344/N rats at doses of 0, 1,000 or 2,000 mg/kg body weight and to groups of 50 male and 50 female B6C3F$_1$ mice at doses of 0, 500 or 1,000 mg/kg. Doses were administered five times per week for 103 weeks.

Under the conditions of these studies, geranyl acetate was not carcinogenic for F344/N rats or B6C3F$_1$ mice of either sex; however, the reduced survival

observed in high dose male rats, high dose male mice, and high and low dose female mice lowered the sensitivity of these studies for detecting neoplastic responses in these groups. In male rats the marginal increases of squamous cell papillomas of the skin and tubular cell adenomas of the kidney may have been related to administration of geranyl acetate.

The Study Scientist for this bioassay is Dr. Kamal Abdo. Questions or comments about the contents of this Technical Report should be directed to Dr. Abdo at P. O. Box 1233, Research Triangle Park, NC 27709 or telephone (919) 541-7819; FTS: 629-7819.

Dated: February 25, 1988.

David P. Rall,

Director.

[FR Doc. 88-4712 Filed 3-3-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-88-1779]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited so submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Managment and Budget, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 18, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Appraiser Checksheets.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This information is needed as part of HUD's Master Conditional Commitment procedure. The form is completed by fee appraisers when application for group appraisals is made. The form serves to record results of review for compliance with Federal environmental law.
Form Number: HUD-54981.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 3,750.
Status: Reinstatement.
Contact:
John J. Coonts, HUD, (202) 755-3046
John Allison, OMB, (202) 395-6880

Date: February 8, 1988.

Proposal: Survey of Pension Funds.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This survey provides the only source of information on the extent of pension fund investment in mortgage-related securities and consequently their provision of funds to the mortgage market. The survey monitors how pension funds respond to changes in ERISA regulations.
Form Number: None.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: Quarterly.
Estimated Burden Hours: 278.
Status: Extension.
Contact:
John H. Dickie, HUD, (202) 755-7270
John Allison, OMB, (202) 395-6880

Date: February 9, 1988.

Proposal: Mortgage Insurance—Single Family Claims Without Conveyance of Title.
Office: Housing.
Description of the Need for the Information and its Proposed Use: Section 426 of the Housing and Urban/Rural Recovery Act of 1983 allows mortgagees to submit claims for insurance benefits without conveying the title to the Secretary of HUD. This rule is needed so that third parties can bid at foreclosure sales and HUD will be able to reduce holdings and resale costs.
Form Number: HUD-91022.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 31,000.
Status: Reinstatement.
Contact:
Ann Marie Sudduth, HUD, (202) 755-7330
John Allison, OMB, (202) 395-6880

Date: February 18, 1988.

Proposal: Technical Suitability of Products Program, Section 521 of the National Housing Act.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This information is needed under HUD's technical suitability of products program to determine the acceptance of materials and products to be used in structures approved for mortgages or loans insured under the National Housing Act. HUD also uses the engineering data to make a determination of technical acceptability.
Form Number: None.
Respondents: Businesses or Other For-Profit.
Frequency of Respondents: On Occasion.
Estimated Burden Hours: 2,200.
Status: Reinstatement.
Contact:
Donald R. Fairman, HUD, (202) 755-6590
John Allison, OMB, (202) 395-6880

Date: February 17, 1988.

Proposal: Proposed Rule—Increase in the Single Person Occupancy Limitation.
Office: Housing.
Description of the Need for the Information and its Proposed Use: Section 202 of the Housing and Urban-

Rural Recovery Act of 1983 is amended to increase the single person occupancy limitation. Owners and agents of all Section 8 projects are required to notify HUD when a particular project does not exceed the 15 percent limitation. Owners and agents can request HUD's approval to exceed the 15 percent limitation so that units will be made available to single persons and not be vacant for long periods.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 343.

Status: New.

Contact:

Judith L. Lemeshewsky, HUD, (202) 426–3944

John Allison, OMB, (202) 395–6880

Date: February 11, 1988.

Proposal: Insurance of Adjustable Rate Mortgages.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information is needed and used so that lenders can furnish to the borrower a disclosure statement stating that the interest rate on the mortgage may change, identify the index used, the frequency of adjustments, and provide a hypothetical payment showing increases over the first five years. An annual disclosure of interest rate adjustment is also required.

Form Number: None.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Respondents: On Occasion and Annually.

Estimated Burden Hours: 1,400.

Status: Reinstatement.

Contact:

Joseph C. Bates, HUD, (202) 426–7212

John Allison, OMB, (202) 395–6880

Date: February 11, 1988.

[FR Doc. 88–4783 Filed 3–3–88; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–08–4212–14; N–42828]

Realty Action; Competitive Sale of Public Land in Douglas County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of realty action.

SUMMARY: The original notice published in the **Federal Register** on Wednesday, June 10, 1987, Vol.52, No. 111, Page 22006, identified eight parcels of land as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976. The notice segregated the land from all other forms of appropriation under the public land laws, including the mining laws. The segregation is due to terminate on March 6, 1988. This notice extends the segregation until December 1, 1988, in order to protect four parcels which have received acceptable bids but have not yet been patented and the remaining four parcels still available for purchase.

Dated: this 19th day of February 1988.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 88–3955 Filed 3–3–88; 8:45 am]

BILLING CODE 4310–HC–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: March 1, 1988.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transporation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washingston, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Harvest States Cooperatives,

(2) P.O. Box 64594, St. Paul, MN 55164;

(3) 1667 Snelling Avenue North, St. Paul, MN 55108.

(4) Russell J. Eichman, P.O. Box 64594, St. Paul, MN 55164.

Noreta R. McGee,

Secretary.

[Fr Doc. 88–4750 Filed 3–3–88; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

Parent Corporation: Alamo Group (USA) Inc., 1502 Walnut, P. O. Drawer 549, Sequin, TX 78156–0549.

Subsidiaries:

Servic-Rhino, Inc.—Texas individually and dba Terrain King Corporation.

Mott Corporation—Illinois,

Triumph Machinery Co.—New Jersey,

B-M-B Company, Inc.—Kansas,

Alamo Group—Tradename.

Noreta R. McGee,

Secretary.

[FR Doc. 88–4751 Filed 3–3–88; 8:45 am]

BILLING CODE 7035–01–M

Motor, Water, Broker, and Freight Forwarder Proceedings; Public Inquiries

AGENCY: Interstate Commerce Commission.

ACTION: Notice of contacts for public inquiries on the status of motor, water, broker, and freight forwarder proceedings.

SUMMARY: A new Case Tracking Unit has been established within the Office of Proceedings' Motor Section. This Unit will handle all telephone inquiries concerning the status of Motor Section proceedings pending before the Commission, including those inquiries previously handled by the Section's paralegal support units ("Teams").

Effective immediately, all inquiries concerning pending licensing, finance, complaint, petition, and miscellaneous procedural and appellate matters involving motor or water carriers, property brokers, and household goods freight forwarders should be directed to the Case Tracking Unit at (202) 275–7023 or 275–7024. Assistance for the hearing

impaired will continue to be available through TDD services (202) 275–1721.

EFFECTIVE DATE: March 4, 1988.

FOR FURTHER INFORMATION CONTACT:

Richard B. Felder, (202) 275–7691
or
Suzanne Higgins O'Malley, (202) 275–7292
[TDD for hearing impaired: (202) 275–1721]

Noreta R. McGee,

Secretary.

[FR Doc. 88–4753 Filed 3–3–88; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31228]

BPM Rail, Inc.; Acquisition and Operation Exemption; LNAC Acquisition Corp.

BPM Rail, Inc. (BPM) a noncarrier, has filed a notice of exemption to acquire and operate 7.7 miles of rail line between Corydon, IN and Corydon Junction, IN which is presently owned by LNAC Acquisition Corp. (LNAC Acquisition), a Class III railroad subsidiary of Itel Rail Car Corporation. LNAC acquired the involved trackage from the Louisville, New Albany & Corydon Railroad Company (LNAC) in December 1987 as provided for by an exemption in Finance Docket No. 31176, *LNAC Acquisition Corp.—Acquisition and Operation Exemption—the Louisville, New Albany and Corydon Railroad Co.*[1]

BPM must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. Ex Parte No. 392 (Sub-No. 1), *Class Exemption for the Acquisition and Operation of Rail Lines under 49 U.S.C. 10901*, _____ I.C.C.2d _____, served February 17, 1988.

Any comments must be filed with the Commission and served on William H. Davis, Davis & Layson, 102 North Capitol Avenue, Corydon, IN 47112.

This 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: February 18, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–3987 Filed 3–3–88; 8:45 am]

BILLING CODE 7035–01–M

[1] LNAC Acquisition acquired the subject line as part of a much larger transaction between entities controlling LNAC Acquisition and LNAC. LNAC noted in the filing in Finance Docket No. 31176, *supra* that it would acquire the LNAC assets pending disposition to a third party purchaser. BPM is that purchaser.

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

March 1, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated wirh the collection; (9) an indication of whether Section 3504(h) of Public Law 96–511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry *and* to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer *and* the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is: Larry E. Miesse and can be reached on (202) 633–4312.

New Collection

(1) Larry E. Miesse, (202) 633–4312.

(2) Office of Justice Programs, Department of Justice.

(3) Adoption of Common Grants Management Rule—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(4) No form number.

(5) On occasion, monthly, quarterly, and annually.

(6) State and local governments, Federal agencies and employees. The Common Grants Management Rule contains collection of information requirements from the public necessary to ensure minimum fiscal control and accountability for Federal funds and to deter fraud, waste and abuse. Information collected covers pre-award, post-award, and close-out information from State and local grantees.

(7) 1,148 annual responses, 70 hours burden per response.

(8) 80,360 estimated public burden hours.

(9) Not applicable under 3504(h).

(10) Robert Fishman, (202) 395–7340.

Larry E. Miesse,

Department Clearance Officer.

[FR Doc. 88–4729 Filed 3–3–88; 8:45 am]

BILLING CODE 4410–18–M

Drug Enforcement Administration

[Docket No. 87–43]

Paul E. Peters, II, D.D.S.; Revocation of Registration

On April 17, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Paul E. Peters, II, D.D.S., Respondent, of 1230 N.W. 9th Avenue, Gainesville, Florida, proposing to revoke DEA Certificate of Registration BP0421038, and to deny any pending applications for renewal of that registration. The bases for the issuance of the Order to Show Cause were that: (1) For several years, Respondent issued prescriptions for controlled substances for other than legitimate medical purposes; (2) he issued numerous prescriptions for controlled substances at times when he was not authorized to handle controlled substances either by the State of Florida or the Drug Enforcement Administration; (3) he falisfied his DEA application for registration by indicating that he was authorized to handle controlled substances by the State of Florida when at that time he was not so authorized; and (4) on May 14, 1986, he was found to be in possession of marijuana, a Schedule I controlled substance, without proper authority to possess that substance.

On May 7, 1987, Respondent filed a timely request for a hearing on the issues raised on the Order to Show

Cause. The matter was docketed before Administrative Law Judge Francis L. Young.

After the matter was set for an administrative hearing, Government counsel filed papers showing that Respondent was convicted, on or about July 7, 1987, of unlawful possession of marijuana, and that the Florida Department of Professional Regulation ordered an immediate suspension of Respondent's license to practice dentistry in that state. Accordingly, Government counsel moved for summary disposition of this matter on the ground that Respondent is no longer authorized to practice dentistry in the State of Florida, nor is he authorized to handle controlled substances in that state.

On October 2, 1987, Government counsel filed a supplement to its motion for summary disposition, and attached a copy of the Florida Department of Professional Regulation decision, dated September 18, 1987. That decision ordered the continued emergency suspension of Respondent's license to practice dentistry until such time as the Florida Board of Dentistry sets aside the suspension.

On November 16, 1987, Respondent filed his response to Government counsel's motion for summary disposition. In that response, Respondent did not deny that his state license had been suspended, nor did he provide any evidence that he is currently authorized to handle controlled substances in that state. Instead, Respondent merely argued that the state action taken against him was improper.

On December 15, 1987, the Administrative Law Judge issued his opinion, recommending the revocation of Respondent's registration and the denial of any pending applications for renewal.

After a careful review of the entire record, the Administrator adopts the Administrative Law Judge's recommendation.

The Administrator finds that the Florida Department of Professional Regulation's order immediately suspending Respondent's license to practice medicine remains in effect. Therefore, Respondent is not currently 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. 86-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 34208 (1985); and *Aqostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). In the instant case, it is clear that Respondent is not currently authorized to handle controlled substances in the State of Florida. Without the appropriate state authority to handle controlled substances, Respondent is not currently entitled to possess a DEA Certificate of Registration.

Since there is no dispute about Respondent's lack of state authority to handle controlled substances, the Administrative Law Judge properly granted the Government's motion for summary disposition. When no question of fact remains or when the facts are agreed, a plenary adversary administrative proceeding is not required, even though the statute prescribes a hearing. In such situations, the rationale is that Congress did not intend for the Agency to perform the meaningless task of conducting a hearing when no issues remain in dispute. See *United States v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *N.L.R.B. v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, M.D.*, Docket No. 77-29 43 Fed. Reg. 11873 (1978); and *Philip E. Kirk, M.D.*, Docket No. 82-36, 48 FR 32887 (1983), aff'd *sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

Therefore, based upon Respondent's lack of state authority to handle controlled substances, the Administrator concludes that Respondent's 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 BP0421038 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 March 4, 1988.

John C. Lawn,

Administrator.

Dated: February 29, 1988.

[FR Doc. 88-4746 Filed 3-3-88; 8:45 am]

BILLING CODE 4410-09-M

John Tobin, R.Ph., d/b/a Garfield Prescription Center; Revocation of Registration

On April 27, 1987, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to John Tobin, R.Ph., d/b/a Garfield Prescription Center, of 5133 Penn Avenue, Pittsburgh, Pennsylvania, seeking to revoke DEA Certificate of Registration AG3132355, to deny any pending applications for renewal of his registration as a retail pharmacy, and to immediately suspend the registration pending the outcome of any administrative proceedings. The bases for the issuance of the Order to Show Cause and Immediate Suspension of Registration were that the pharmacy's continued registration was inconsistent with the public interest and would pose an imminent danger to the public health and safety during the pendency of any administrative proceedings.

The Order to Show Cause and Immediate Suspension of Registration were personally served upon Mr. Tobin on May 1, 1987. At that time, DEA Certificate of Registration AG3132355, all unused order forms, and all controlled substances in stock were seized pursuant to the immediate suspension.

Mr. Tobin has failed to respond to the Order to Show Cause and Immediate Suspension of Registration. Therefore, the Administrator concludes that he has waived his opportunity for an administrative hearing on the issues raised in the Order to Show Cause and Immediate Suspension of Registration, and enters this final order based upon the information contained in the investigative file. 21 CFR 1301.54(d) and 21 CFR 1301.54(e).

The Administrator finds that a joint investigation conducted by the DEA Pittsburgh Resident Office and the Pittsburgh Police Narcotics Unit revealed that John Tobin, R.Ph., the owner and registered pharmacist of Garfield Prescription Center, was diverting large quantities of controlled substances from the pharmacy for other than legitimate medical purposes. On December 9, 1987, while conducting surveillance, detectives from the Pittsburgh Police Narcotics Unit observed Mr. Tobin deliver controlled substances to an individual for whom there were no controlled substance prescriptions on file in the pharmacy. Subsequent to that transaction, another individual associated with Mr. Tobin and the person who originally received

the diverted controlled substances, sold the drugs to an undercover officer.

On December 10, 1986, a search warrant was executed at the pharmacy and an accountability audit of the pharmacy's controlled substance stock was conducted for the period from January 1, 1986, to December 10, 1986. The audit revealed shortages of Schedule III and IV controlled substances in excess of 400,000 dosage units for that period.

In addition, DEA Investigators conducted an audit of the pharmacy's Schedule II controlled substance records and stock for the period from May 2, 1985, to October 31, 1985. Mr. Tobin alleged to Investigators that on October 31, 1985, 26,000 dosage units of various Schedule II controlled substances, including Percodan, Percocet, and Dilaudid, were stolen from the pharmacy. This theft was never reported to DEA or the local police. Even taking into consideration the alleged theft, the audit revealed an unexplained shortage of 1,323 dosage units of Percocet during that time. In addition, an accountability audit conducted at the pharmacy for the period from May 1, 1984, to May 2, 1985, revealed unexplained shortages of more than 17,000 dosage units of Percocet and 3,000 dosage units of Percodan.

The Administrator also finds that following the audits, Mr. Tobin continued to order excessive quantities of controlled substances. These quantities far exceeded those determined as necessary to conduct the pharmacy's legitimate business. For example, during the period from December 11, 1986, to March 20, 1987, the pharmacy purchased more than 100,000 combined dosage units of Tussionex, Hycodan and Anexsia-D. The Administrator finds that such large orders cannot be justified after reviewing the pharmacy's legitimate controlled substance dispensing history. Therefore, the Administrator concludes that the pharmacy purchased such large quantities of controlled substances with the intention of diverting those drugs from legitimate channels.

In addition, subsequent to the issuance of the Order to Show Cause and Immediate Suspension of Registration, on February 3, 1988, in the United States District Court for the Western District of Pennsylvania, John Tobin was convicted, after entering pleas of guilty, of six counts of violating 21 U.S.C. 841(a)(1), and was sentenced to five years imprisonment; following completion of his prison sentence, he is subjected to an additional five years of special parole. Each offense for which Mr. Tobin was convicted constitutes a felony conviction relating to controlled subtances.

The Drug Enforcement Administration has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer, or key employee, or who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances. See *Ozell Green, d/b/a Green's Prescription Center*, 51 FR 28897 (1986); *Ozie T. Faison, d/b/a Smith Discount Drugs*, Docket No. 85–37, 51 FR 16403 (1986); *Diodo Leduc, d/b/a Farmacia Leduc*, Docket No. 85–5, 51 FR 12751 (1986); *Spoon's Pharmacy*, Docket No. 84–42, 50 FR 46520 (1985); *Daniel Levine, t/a Gladstone Pharmacy*, Docket No. 84–20, 50 FR 32651 (1985); *Coolidge Drugs, Inc., d/b/a The Apothecary*, 50 FR 31785 (1985); *Medicine Shoppe*, 50 FR 30533 (1985); *B. Ruppe Drugstore, Inc.*, Docket No. 84–16, 50 FR 23203 (1985).

In this case, in addition to the felony convictions relating to controlled substances, the evidence also shows that Mr. Tobin clearly used the pharmacy's registration to divert controlled substances for other than legitimate medical purposes. Thus, based upon Mr. Tobin's felony convictions relating to controlled substances and the diversion of large quantities of controlled substances from the pharmacy's stock, he can no longer be entrusted with the DEA Certificate of Registration.

Having concluded that, under the facts and circumstances presented in this matter, the registration of John Tobin, R.Ph., d/b/a Garfield Prescription Center must be revoked, 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 AG3132355 be, and it hereby is revoked, and that any pending applications for renewal of that registration be, and they hereby are denied.

This order is effective March 4, 1988.

John C. Lawn,

Administrator.

Dated: February 29, 1988.

[FR Doc. 88–4747 Filed 3–3–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

State Account Analyses
No forms
State or local governments
Monthly
53 respondents; 128 hours; no forms

ETA/UIS is requesting States to submit copies of Account Analyses from their Clearing-Benefit Payment UI bank accounts. ETA/UIS is deciding whether to revamp State UI cash management system, including reporting Account Analyses to monitor UI account balances, account earnings, and bank compensation.

Alien Claimant Activity Report
ETA 9016
Quarterly
State or local governments
53 respondents; 2,120 burden hours; 1 form

This report will allow assessment of cost-efficiency of the INS verification system as well as to determine the impact of the Immigration Reform and Control Act on the UI system.

Extension

Employment and Training Administration

Implementing Regulations for Programs under Title IV of the Job Training Partnership Act
1205–0213; no forms
Annually and as needed
State or local governments; Non-profit institutions
200 respondents; 2,800 burden hours; no forms

Master Plans and Comprehensive Annual Plans contain basic information about the administration and program operation of employment and training programs operated under section 401 of the Job Training Partnership Act. This information is critical for the national administration of these programs.

Occupational Safety and Health Administration

Hazardous Waste Operations and Emergency Response
1218–0139
On occasion
State and local governments; Businesses and other for-profit
51,930 responses 2,497,076 burden hours; 0 forms

This information is needed by employers and employees involved in hazardous waste operations and emergency responses to prevent illness and injury due to exposure to hazardous wastes.

Signed at Washington, DC, this 1st day of March, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88–4786 Filed 3–3–88; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–20,479]

Taylor Lock Co., Philadelphia, PA; Public Hearing

A public hearing is scheduled for 6:30 pm on March 16, 1988 at the Philip Murray House, 6300 Old York Road, Philadelphia, Pennsylvania. The public hearing is for petitioners or any other persons showing a substantial interest in the proceedings to furnish additional testimony and evidence of a relevant and material nature bearing upon the investigation regarding petition TA–W–20,479 filed on behalf of workers and former workers at Taylor Lock Company, Philadelphia, Pennsylvania.

Such individuals who desire to furnish additional testimony as evidence should inform the Director, Office of Trade Adjustment Assistance, Department of Labor, of their intention to appear not later than Monday, March 14, 1988. Mr. Marvin M. Fooks, Director, OTAA, can be reached in Washington, DC, at (202) 376–2646. The Director's Office is in Room 6434, 601 D Street NW., Washington, DC, 20213.

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

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–4785 Filed 3–3–88; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 State. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal

Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW, Room S-3504, Washington, DC. 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Kentucky:
KY88-6 (Jan. 8, 1988) ..... pp. 310-311.
PA88-1 (Jan. 8, 1988) ..... pp. 840-843, pp. 845,849.

Pennsylvania:
PA88-2 (Jan. 8, 1988) ..... pp. 852-854, pp. 858-862.
PA88-3 (Jan. 8, 1988) ..... pp. 864.
PA88-5 (Jan. 8, 1988) ..... pp. 880-882.
PA88-7 (Jan. 8, 1988) ..... pp. 902-903.
PA88-8 (Jan. 8, 1988) ..... pp. 912-920.
PA88-9 (Jan. 8, 1988) ..... pp. 922-924.
PA88-10 (Jan. 8, 1988) ..... pp. 930.
PA88-11 (Jan. 8, 1988) ..... pp. 934.
PA88-12 (Jan. 8, 1988) ..... pp. 938-939.
PA88-13 (Jan. 8, 1988) ..... pp. 942.
PA88-14 (Jan. 8, 1988) ..... pp. 945-946.

Virginia:
PA88-18 (Jan. 8, 1988) ..... pp. 1160e.
Listing by Location (index) ..... pp. xliv-xlv

Volume I:

Volume II:

Indiana:
IN88-4 (Jan. 8, 1988) ..... pp. 280-281.

Texas:
TX88-27 (Jan. 8, 1988) ..... pp. 1000-1001.
TX88-28 (Jan. 8, 1988) ..... pp. 1004-1005.
TX88-29 (Jan. 8, 1988) ..... pp. 1008-1009.
TX88-30 (Jan. 8, 1988) ..... pp. 1012-1013.
TX88-31 (Jan. 8, 1988) ..... pp. 1016-1017
TX88-32 (Jan. 8, 1988) ..... pp. 1020-1021.
TX88-33 (Jan. 8, 1988) ..... pp. 1024-1025.
TX88-34 (Jan. 8, 1988) ..... pp. 1028-1029.
TX88-35 (Jan. 8, 1988) ..... pp. 1032.
TX88-36 (Jan. 8, 1988) ..... pp. 1034-1035
TX88-37 (Jan. 8, 1988) ..... pp. 1038.
TX88-38 (Jan. 8, 1988) ..... pp. 1040-1041
TX88-39 (Jan. 8, 1988) ..... pp. 1044-1045.

Volume III:

None.....

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 26th day of February 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-4528 Filed 3-3-88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-43-M]

Greer Limestone Co.; Petition for Modification of Application of Mandatory Safety Standard

Greer Limestone Company, Greer Building, Morgantown, West Virginia 26505 has filed a petition to modify the application of 30 CFR 57.4463 (liquefied petroleum gas use underground) to its Greer Mine and Mill (I.D. No. 46-00016) located in Monongalia County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the use of liquefied petroleum gases underground be limited to maintenance work.

2. As an alternate method, petitioner proposes to use propane to fuel a maintenance pickup truck. In support of this request, petitioner states that—

(a) The truck is used to transport two men to their working areas at the beginning of their shift and back after the shift is over, and once during the shift for a maintenance run;

(b) The truck is equipped with two 100 pound tanks, which are fully enclosed with a protective cage, and have steel angle to keep them from moving around in the bed of the truck. The tanks are also equipped with check valves to guard against stray leaks, and the truck has a "NO SMOKING" sign attached to it;

(c) The use of propane for fueling a truck that is used infrequently eliminates gasoline slushing around in the vehicle's tank and also eliminates the emission of dangerous gases such as CO and CO_2; and

(d) Due to the large size of the mine and the volume of air that is moving, it is unlikely that a vehicle that is fueled with propane and used infrequently could produce a percentage of gas that could create a problem.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 4, 1988. Copies of the petition are available for inspection at that address.

Dated: February 25, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-4784 Filed 3-3-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-16; Exemption Application No. D-6992 et al.]

Grant of Individual Exemptions; Carlisle Motors, Inc., Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Carlisle Motors, Inc. Profit Sharing Plan (the Plan), Located in Clearwater, Florida

[Prohibited Transaction Exemption 88-16; Exemption Application No. D-6992]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a parcel of real property located at 2085 Gulf to Bay Boulevard, Clearwater, Florida (the Property) by the Plan to Carlisle Motors, Inc. (the Employer) for $2,075,000 in cash, provided that the terms of the transaction were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction was consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 5, 1987 at 52 FR 21393.

Effective Date: December 13, 1984.

Written Comments: The Department received one comment on the proposed exemption and no requests for a hearing. The commentator questioned the fact that only one appraisal on the Property was performed by an appraiser that was friendly to the Employer, that the Property was not advertised for sale for at least 90 days and that the Plan Committee was not polled by secret ballot when making its decision to approve the sale.

In response to the comment, the applicant makes the following representations. First, with regard to the issue of the appraisal, the First National Bank of Clearwater, the Plan's trustee (the Trustee), as opposed to the Employer, had previously engaged the services of Fogarty and Finch, Inc., MAI (the Appraiser) for purposes of performing annual valuations on the Property. Having prepared multiple appraisals of the Property over a period of years, the Appraiser was the logical choice of the Trustee to update the value of the Property.

With regard to the issue of advertising the Property for at least 90 days, the Property, was in fact, listed with Lee Arnold and Associates, Inc. (Lee Arnold), the largest commercial realtor in Upper Pinellas County, Florida for the period from July 1984 through the end of October 1984. The Property is located in downtown Clearwater and the applicant represents that no new automobile dealerships had moved into downtown Clearwater in a substantial number of years and in fact numerous dealers had vacated the area in favor of suburban locations. It was the opinion of Lee Arnold that no amount of additional time or effort would result in a sale equal to or greater than the amount offered by the Employer.

Finally with respect to the decision by the Plan Committee to sell the Property, the applicant represents that the Plan Committee discussed the sale openly so that anyone on the Plan Committee could comment. At the time the decision was made, the Plan Committee consisted of 8 members, only 2 of whom were senior management with the other 6 members being middle management and non-management employee-participants.

In addition, even though the Appraiser took recent improvements into account in making his appraisal, the purchase price paid to the Plan was increased from the appraised amount of $1.8 million to $2.05 million. This additional compensation was paid to the Plan because the Trustee determined that the Plan be compensated further for those improvements which were constructed predicated upon a perceived long term lease continuation with the Employer. The Employer also paid all costs of closing on the transaction.

After consideration of the entire record, the Department has determined to grant the exemption as proposed.

For further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Karl R. Moedl, M.D., P.A. Profit Sharing Retirement Plan and Karl R. Moedl, M.D., P.A. Pension Retirement Plan (Collectively, the Plans), Located in Albuquerque, New Mexico

[Prohibited Transaction Exemption 88-17; Exemption Application Nos. D-7168 and D-7169]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

through (E) of the Code, shall not apply to the purchase of certain real property (the Property) by the Plans from Karl R. Moedl, M.D. and Joan S. Moedl, husband and wife, and disqualified persons with respect to the Plans, provided that the Plans pay no more than the fair market value for the Property as of the date of purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 13, 1988 at 53 FR 814.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

John W. Dwyer, P.C. Pension Plan and John W. Dwyer, P.C. Profit Sharing Plan (the Plans), Located at Bismarck, North Dakota

[Prohibited Transaction Exemption 88-18; Exemption Application Nos. D-7224 and D-7225]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash by the Plans of certain real property (the Real Property) to John W. Dwyer, Sr., the father of the sole shareholder of the Plans' sponsor and a disqualified person with respect to the Plans, provided that the price paid be no less than the greater of the fair market value of the Real Property on the date of sale or the total outlay by the Plans in connection with the acquisition and holding of the Real Property to the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 13, 1988 at 53 FR 814.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of March, 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretation, Pension and Welfare Benefits Administration.

[FR Doc. 88-4787 Filed 3-3-88; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-13]

Babcock & Wilcox Co., (The Babcock and Wilcox Critical Experiment Facility); Order Terminating Facility Operating License

By application dated August 7, 1984, as supplemented, Babcock and Wilcox Company (the licensee) requested the Nuclear Regulatory Commission (the Commission) for authorization to dispose of the component parts of the critical experiment facility and to terminate Facility Operating License No. CX-10. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License", was published in the **Federal Register** on September 18, 1984 (49 FR 36579). No request for a hearing or petition for leave to intervene was filed following notice of the poposed action. By Order dated April 4, 1985 the Commission authorized dismantling of the facility and disposal of component parts as proposed in the licensee's dismantling plan.

Reactor operations were terminated in September 1983, and all fuel has been removed from the core and shipped offsite to a Department of Energy facility. The reactor has been completely dismantled and all requirements, particularly those relevant to residual radioactivity and the packaging and shipping of fuel and radioactive material, have been met. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated April 4, 1985. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the licensee, located in Lynchburg, Campbell County, Virginia, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(b), Facility Operating License No. CX-10 is terminated as of the date of this Order. In accordance with 10 CFR Part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment Impact was published in the **Federal Register** on February 24, 1988 (53 FR 5481).

For further details with respect to this action, see (1) the application for termination of facility operating license, dated August 7, 1984, as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Components Parts and Terminating Facility License" published in the **Federal Register** on September 18, 1984 (49 FR 36579). Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 26th day of February 1988.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-4723 Filed 3-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-20294, License No. 35-23134-01, EA 87-172]

Log-Tec, Cleveland, OK; Order Revoking License

I

On September 8, 1987, the NRC issued an Order to Log-Tec suspending its license (effective immediately) and requiring it to show cause why its license should not be revoked.

II

By letter dated September 25, 1987, the Licensee, without providing good cause, requested a hearing on the Order. In a letter dated December 1, 1987, the licensee withdrew its request for a hearing and requested that its License No. 35–23134–01 be teminated. On February 3, 1988, Roger A. Couffer, on behalf of the licensee, signed an affidavit attesting that he had met the conditions of 10 CFR 30.36 (d)(1) and that he neither owns nor possesses radioactive material licensable by the NRC. The Commission has found the information submitted to be adequate.

III

Accordingly, pursuant to sections 81, 161, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 30.61, License No. 35–23134–01 is revoked.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland, this 23 day of February 1988.

[FR Doc. 88–4724 Filed 3–3–88;8:45am]

BILLING CODE 7590–01–M

[Docket No. 50-249]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of schedular exemptions from the requirements of 10 CFR Part 50 to the Commonwealth Edison Company (CECo) (the license) for the Dresden Nuclear Power Station, Unit No. 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action: The proposed action would grant schedular exemptions from requirements of Section III.D.2(b) and III.D.3 (type B and type C tests respectively) of Appendix J to 10 CFR Part 50 relating to the primary reactor containment leakage testing for water-cooled reactors. The purposes of the tests are to assure that leakage through primary reactor containment shall not exceed allowable leakage rate values as specified in the Technical Specifications and that periodic surveillance is performed.

The Need for the Proposed Action: By letter dated January 10, 1988, the licensee requested, pursuant to 10 CFR 50.12(a), a schedular exemption for Dresden Unit 3 from the 2 year test interval for certain Type B and C leak rate tests required by 10 CFR Part 50, Appendix J, Sections III.D.2(a) and III.D.3. The exemption is requested to support the current outage schedule and avoid the potential for an earlier reactor shutdown.

The Dresden Unit 3 shutdown for its End of Cycle 9 (EOC 9) refueling and Recirculation Pipe Replacement (RPR) began on October 28, 1985. Due to the extensive RPR program, the EOC 9 outage was unusually long with startup not occurring until September 1986. Type B and C local leak rate testing commenced on September 27, 1985 and continued through August of 1986. As a result of the extensive RPR outage, a four week midcycle outage related to feedwater system problems, and other considerations, the shutdown for refueling has been delayed to March 26, 1988. Maintaining this schedule will result in exceeding the two year test interval.

Environmental Impacts of the Proposed Action: The proposed action includes exemptions from performing certain type B and C tests for a period of 90 days from January 10, 1988. As stated in 10 CFR Part 50, Appendix J, the purpose of the primary containment leak rate testing requirements is to ensure that leakage rates are maintained within the Technical Specification requirements and to assure that proper maintenance and repair is performed throughout the service life of the containment boundary components. The requested exemption is consistent with its intent in that it represents a one time only schedular extension of short duration. The required leak tests will still be performed to assess compliance with Technical Specification requirements, albeit later, and to assure that any required maintenance or repair is performed. As noted in Sections III.D.2 and III.D.3 of Appendix J, it was intended that the testing be performed during refueling outages or other convenient intervals. Extending the 2 year interval by a small amount to reach the next refueling outage will not significantly impact the integrity of the containment boundary and therefore will not significantly impact the consequences of an accident or transient in the unlikely event of such an occurrence during the 90 day extended period.

This is further supported by the information provided in the application. The pathways affected were tested during the July 1986 Integrated Leak Rate Test (ILRT). Although some local leak rate testing intervals will exceed two years by the end of the current operating cycle, the fact that a number of these pathways were tested as part of the ILRT within two years provides assurance that containment integrity has not been compromised. In addition, the pathways for which testing would be deferred have in general demonstrated good local leak rate test results as indicated in the application. Finally, the estimated current total leakage, which was based on past data from the same pathways, from all applicable pathways is below the value allowed by the Technical Specifications.

Based on the staff's evaluation, the level of safety in the areas involved in these exemptions is equivalent to that achieved by compliance with the technical requirements of Sections III.B.2(a) and III.B.3 of Appendix J to 10 CFR Part 50. Thus, radiological releases will not differ from those determined previously and the proposed exemptions do not otherwise affect facility radiological effluents or occupational exposures. The proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of Section III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use Resources: This action does not involve the use of resources not considered previously in the Final Environmental Statement for

Dresden, Units 2 and 3 dated November 1973.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, the NRC staff 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 proposed action, see the licensee's letter dated January 10, 1984. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Rockville, Maryland, this 26th day of February 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V, and Special Projects.

[FR Doc. 88-4720 Filed 3-3-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power and Light Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP-67, issued to the Florida Power and Light Company (the licensee), for operation of the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida.

Identification of Proposed Action: The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 728 fuel assemblies to 1706 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated June 12, 1987. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. DPR-67, Florida Power and Light Company, St. Lucie Plant, Unit No. 1, Docket No. 50-335," dated February 29, 1988.

Summary of Environmental Assessment: The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For the St. Lucie Plant, Unit No. 1, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or nonradiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 milirem per year; the estimated dose to the population within an 80 kilometer radius is estimated to be less than 0.1 person-rem per year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than three percent of the total annual occupational radiation exposure for this facility.

The only nonradiological impact affected by the SFP expansion is the waste heat rejected. The increase in total plant waste heat is less than 0.03%. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated June 12, 1987 and additional information provided by the licensee in letters dated September 8, 1987, October 20, 1987 (L-87-422, L-87-424, and L-87-425), December 21, 1987, December 22, 1987, and December 23, 1987, (L-87-535, L-87-536, and L-87-537), (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the Final Environmental Statement for the St. Lucie Plant, Unit No. 1, dated June 1973, and (4) the Environmental Assessment dated February 29, 1988.

These documents are available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC 20555 and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Dated at Rockville, Maryland, this 29th day of February 1988.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-4721 Filed 3-3-88; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co. et al., Millstone Nuclear Power Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of changes to the Millstone Unit 2 Technical Specifications (TS), to allow unlimited use of a spent fuel consolidation process, to Northeast Nuclear Energy Company, et al. (the licensee), for the Millstone Nuclear Power Station, Unit 2, located in New London County, Connecticut.

Environment Assessment

Identification of Proposed Action: On June 2, 1987, the NRC staff issued Amendment No. 117 to Facility Operating License No. DPR-65 which permitted storage of consolidated spent fuel at Millstone Unit 2 in partial response to the licensee's application dated May 21, 1986. Amendment No. 117 expanded the number of storage locations from 1112 to 1346 by permitting the storage of consolidated spent fuel boxes in locations required to be blocked with cell blocking devices when surrounding locations are used for the storage of unconsolidated assemblies. Amendment No. 117 allowed the storage of 1965 assemblies in 1346 locations, taking into account the mix of locations needed for intact fuel assemblies and locations used for storage of consolidated fuel boxes (each equivalent to 2 intact fuel assemblies).

The Environmental Assessment and Finding of No Significant Impact associated with Amendment No. 117 was published in the Federal Register on June 1, 1987 (52 FR 20477).

However, Amendment No. 117 contained a footnote in TS 3.2.20, "Spent Fuel Pool," that limited the storage of consolidated spent fuel storage boxes to five (5).

The NRC staff is now considering a change to the TS to remove the footnote to TS 3.2.20. The change would remove the limitation restricting the storage of consolidated spent fuel boxes to five (5).

In response to the NRC staff's questions on the licensee's amendment requested dated May 21, 1986, the licensee provided answers in a letter of April 30, 1987. Attached to the letter was a document entitled "Fuel Consolidation Demonstration Program." The licensee, with the NRC staff's knowledge, undertook the consolidation of ten (10) assemblies pursuant to the provisions of 10 CFR 50.59. The staff will review the consolidation process in connection with authorizing the use of the expanded capacity of the spent fuel pool that results from the use of the consolidation process.

The Need for the Proposed Action: The proposed license amendment is necessary to improve the spent fuel storage situation at Millstone Unit 2. At the present time, the ability to off-load a reactor core into spent fuel pool storage will be lost after 1994, and spent fuel pool storage will be full in 1998. The proposed spent fuel consolidation storage capability will allow a delay until 2009 at which time the spent fuel pool storage will be full.

Environmental Impacts of the Proposed Action: The NRC staff has evaluated the radiological (off-site and on-site) nonradiological impacts of the proposed license amendment. The Environmental Assessment associated with Amendment No. 117 addressed the full range of potential environmental impacts associated with storage of unlimited consolidated spent fuel at Millstone Unit 2.

The actual consolidation process involves a machine, located in the spent fuel storage pool, which removes the fuel rods from a spent fuel assembly and transfers these rods to a storage canister. The consolidation machine is designed to prevent fuel damage. In addition, a TV camera is utilized to detect damaged fuel rods which would be removed for storage in a damaged rod storage box. The above notwithstanding, a fuel assembly might be damaged during consolidation. As indicated in the Safety Evaluation issued in support of Amendment No. 117, "* * * approximately 15000 Millstone Unit 2 fuel assemblies which have been subcritical for 120 days would have to be ruptured to obtain a dose equivalent to ¼ of that allowed in 10 CFR Part 100." Since fuel, to be consolidated, is required to have at least five years decay-time, the damage of a fuel assembly in the consolidation process is not significant.

With regard to the waste generated by the consolidation process, this waste falls into two categories. The first category is the fuel assembly skeletons and end fittings. Following removal of the spent fuel pins, the remainder of the fuel assembly (end fittings, guide tubes, and grids) will be stored in boxes in the spent fuel pool. These boxes will be shipped off-site. The second category of waste is generated by special filters which will pick up any loose material (crud) generated by the consolidation process. These filters will be handled in the same way as other, similar filters (e.g., spent fuel pool filters). In the case of both types of waste, these materials would have been retained as part of the spent fuel and ultimately shipped off-site with the spent fuel. Thus, we conclude that no net additional waste is generated by the consolidation process.

Finally, with regard to occupational exposures, the consolidation machine is located at the bottom of the spent fuel pool and operated remotely. Thus, the occupational exposures will not be significantly different from that occuring from similar activities in the spent fuel pool. The conclusion was confirmed by the licensee during the recent demonstration of the spent fuel consolidation process. Accordingly, we conclude that, over the lifetime of the facility, the consolidation process will not significantly add to the occupational exposue at Millstone Unit 2. During use of the consolidation process, equipment failure may necessitate additional radiation exposure to operating personnel. Under these conditions, the licensee will utilize existing organizations and procedures to assure that such exposures will be "as low as is reasonably achievable".

The NRC staff concludes that there are not additional, measurable, environmental impacts associated with the use of the spent fuel consolidation process described in the licensee's submittal dated April 30, 1987.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated May 21, 1986, as supplemented by letter dated April 30, 1987, (2) Amendment No. 117 to Facility Operating License No. DPR-65, and (3) the Environmental Assessment and Finding of No Significant Impact (52 FR 20477). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulation Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 24th day of February 1988.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–4722 Filed 3–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–336]

Northeast Nuclear Energy Co. et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 124 to Facility Operating License No. DPR-65, to Northeast Nuclear Energy Company, The Connecticut Light and Power Company, and Western Massachusetts Electric Company, which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2, located in the Town of Wateford, Connecticut. The amendent was effective as of the date of its issuance.

The amendment provides changes to the Technical Specification (TS) 4.6.1.2, "Containment Leakage" as follows: (1) The reference to ANSI Standard N45.4–1972 is deleted and (2) the error analysis

requirements are modified to allow the use of alternate methods. In conjunction with an exemption to the requirements of 10 CFR Part 50, Appendix J, Section III.A.3, the above changes to the TS allow for use of ANSI/ANS Standard 56.8–1981 for "mass point" determination of containment leakage rate and for addressing the inherent errors associated with such testing.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Oportunity for Prior Hearing in connection with this action was published in the **Federal Register** on January 12, 1988 (53 FR 766). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared in Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributed to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1973.

For further detrails with respect to this action, see (1) the application for amendment dated December 28, 1987, as supplemented by letter dated January 5, 1988, (2) Amendment No. 124 to Facility Operating License No. DRP–65, and (3) the Environmental Assessment and Finding of No Significant Impact (53 FR 3801). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/III.

Dated at Rockville, Maryland, this 11 day of February 1988.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–4725 Filed 3–3–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Co. and The Cleveland Electric Illuminating Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 106 to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), which revised the Technical Specifications (TS's) for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility), located in Ottawa County, Ohio. The amendment is effective as of the date of issuance and is to be implemented not later than

This amendment revises the TS Sections 3/4.7.10, 6.4, and 6.9, and Bases section 3/4.7.10 to update the TS's to reflect current plant design, testing, and compensatory measures relating to the fire protection features and programs at the facility.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings, as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on December 16, 1987 (52 FR 47811). No request for a hearing or petition to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on February 19, 1988 at 53 FR 5061.

For further details with respect to this action, see (1) the application for amendment dated December 7, 1987, (2) Amendment No. 106, to license No. NPF–3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V, and Special Projects.

Dated at Bethesday, Maryland, this 25th day of February 1988.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88–4726 Filed 3–3–88; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, March 10, 1988, from 9:00 a.m. to 5:00 p.m. and on Friday, March 11, 1988, from 8:30 a.m. until the Commission completes its agenda. The meeting will be held in the Congressional Room of the Quality Inn—Capitol Hill, 415 New Jersey Avenue NW. The meeting will be devoted to a review of a draft of the Commission's upcoming Report to the Congress. Other topics may be covered, if time permits.

ADDRESS: The Commission is located at suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 88–4748 Filed 3–3–88; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–16292; 812–6946]

American Benefit Life Insurance Co. et al.; Application for Exemption

Date: February 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: American Benefit Life Insurance Company ("American Benefit"), American Benefit Variable Annuity Account ("Separate Account") and American Republic Equities Corporation ("Underwriter")

Relevant 1940 Act Section: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants seek an order to permit American Benefit to deduct from the Separate Account the mortality, expense and distribution risk charges imposed under the PaineWebber Advantage Annuity ("Contract"), an individual flexible payment deferred annuity contract funded in the Separate Account.

Filing Date: The application was filed on December 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person many request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on March 25, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549; American Benefit Life Insurance Company, 421 New Karner Road, Albany, New York, 12205; American Republic Equities Corporation, 601 Sixth Ave., Des Moines, Iowa 50334.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272–3032 or Lewis B. Reich, Special Counsel (202) 272–2061 (Office of Insurance Products).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. The Separate Account was established by American Benefit under New York law to fund the Contracts. The Separate Account is registered as a unit investment trust under the 1940 Act. A registration statement on Form N–4 under the Securities Act of 1933, as amended, has been filed to register the offering of the Contracts. The Separate Account presently consists of six Divisions, each of which invests solely in the shares of one of the Portfolios of the PaineWebber Series Trust ("Fund"), an open-end diversified management investment company which is registered under the 1940 Act.

2. No initial sales charge is deducted from purchase payments. An early withdrawal charge is assessed to purchase payments made within six years prior to the date of redemption. For partial withdrawals, the charge is 5% of any amounts withdrawn which are applicable to purchase payments made within six years prior to the date of withdrawal. For complete withdrawals, the early withdrawal charge is 5% of purchase payments made within the prior six years not already withdrawn.

3. For assuming the risk that the early withdrawal charge will be insufficient to compensate American Benefit for the costs of selling the Contracts, a distribution expense risk charge is computed and deducted daily from each Division at an annual rate of 0.15% of the total net assets of each Division. If the distribution expense risk charge is insufficient to cover the actual risk assumed, then American Benefit will bear the loss; howver, if the charge is more than sufficient, the excess will be a gain to American Benefit.

4. Applicants represent that the total amount of the distribution expense charge and the early withdrawal charge will not exceed nine percent of the purchase payments made under the Contract. Applicants have undertaken to monitor the charges to ensure that it will never exceed nine percent.

5. For assuming certain risks under the Contracts, American Benefit imposes mortality and expense risk charges in the amount of .85% and .40% respectively of the total net assets of each Division. If the mortality and expense risk charges are insufficent to cover the actual costs of assuming the risks, American Benefit will bear the loss; however, if the charges are more than sufficient the excess will be a gain to American Benefit.

6. Applicants represent that the mortality, expense and distribution expense risk charges cannot be increased under the Contract.

7. Applicants represent that the mortality, expense and distribution risk charges are reasonable in relation to the risks assumed by American Benefit under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing American Benefit to undue risk of loss, and fall with the range of similar charges imposed under competitive variable annuity products.

8. Applicants represent that the mortality, expense and distribution risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates.

9. Applicants represent that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

Applicant's Conditions: If the requested order is granted, Applicants agree to the following conditions:

1. American Benefit will maintain at its home office, and make available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, American Benefit's cpmparative survey of competitive annuity products.

2. American Benefit will maintain and make available to the Commission upon request a memorandum setting forth the basis of its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

3. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–4767 Filed 3–3–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending, February 26, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45458

Parties: Members of International Air Transport Association
Date Filed: February 22, 1988
Subject: Mid-Atlantic Europe/Africa/Asia Fares

Proposed Effective Date: April 1, 1988

Docket No. 45459

Parties: Members of International Air Transport Association
Date Filed: February 22, 1988
Subject: Mexico/Canada Europe Fares
Proposed Effective Date: April 1, 1988

Docket No. 45460

Parties: Members of International Air Transport Association
Date Filed: February 22, 1988
Subject: Malya Airport Tax
Proposed Effective Date: November 1, 1988

Docket No. 45464

Parties: Members of International Air Transport Association
Date Filed: February 24, 1988
Subject: Amend Higher Intermediate Pt. Rule
Proposed Effective Date: April 1, 1988

Docket No. 45465

Parties: Members of International Air Transport Association
Date Filed: February 24, 1988
Subject: Rate Levels from Malawi
Proposed Effective Date: January 22, 1988

Docket No. 45471

Parties: Members of International Air Transport Association
Date Filed: February 25, 1988
Subject: Standardization of No/Central Pacific Resos.
Proposed Effective Date: April 1, 1988

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-4761 Filed 3-3-88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 26, 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. 45462

Date Filed: February 23, 1988
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 22, 1988
Description: Application of Aloha Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity to operate scheduled nonstop service for passengers, property and mail between Honolulu, Hawaii and Tokyo, Japan.

Docket No. 45467

Date Filed: February 25, 1988
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 24, 1988
Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide nonstop air transportation over U.S.—Mexico routes B.2 and C.3.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 4762 Filed 3-3-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-3-1]

Fitness Determination of Enterprise Airlines, Inc.; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 88-3-1, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Enterprise Airlines, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: March 1, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-4763 Filed 3-3-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-3-5]

Fitness Determination of Qwest Commuter Corp., d/b/a Qwest Air; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order 88-3-5, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Qwest Commuter Corporation d/b/a Qwest Air is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 8, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: March 1, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-4764 Filed 3-3-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 29, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer,

Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0073.
Form Number: ATF F 5150.9.
Type of Review: Extension.
Title: Formula and/or Process for Articles Made with Specifically Denatured Spirits.
Description: ATF F 5150.19 is completed by persons who use specificially denatured spirits in the manufacture of certain articles. ATF uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirements of 26 U.S.C. 5273.
Respondents: Businesses or other-for-profit, Small businesses or organizations.
Estimated Burden: 2,472 hours.

OMB Number: 1512–0137.
Form Number: ATF F 5150.22.
Type of Review: Extension.
Title: Application for Permit to Use Alcohol Free of Tax.
Description: ATF F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). The form identifies the location of the premises and establishes whether the premises will be in conformity with Federal laws and regulations.
Respondents: Businesses or other-for-profit, Small businesses or organizations.
Estimated Burden: 7,376 hours.

OMB Number: 1512–0191.
Form Number: ATF F 5100.16
Type of Review: Extension.
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.
Description: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.
Respondents: Businesses or other-for-profit, Small businesses or organizations.
Estimated Burden: 300 hours.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 88–4759 Filed 3–3–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 29, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505–0010.
Form Number: FC–2.
Type of Review: Extension.
Title: Weekly Consolidated Foreign Currency Report on Foreign Branches and Subsidiaries of United States Banks.
Description: This report is required by Title II of Pub. L. 93–110 (31 U.S.C. 5315) and used by the Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Respondents are large Multinational Nonbanking Firms.
Respondents: Businesses or other for-profit.
Estimated Burden: 5,058 hours.

OMB Number: 1505–0012.
Form Number: FC–1.
Type of Review: Extension
Title: Weekly Foreign Currency Report of Banks in the United States.
Description: This report is required by Title II of Pub. L. 93–110 (31 U.S.C. 5315) and used by the Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Respondents are large Multinational Nonbanking Firms.
Respondents: Businesses or other for-profit.
Estimated Burden: 4,543 hours.

OMB Number: 1505–0013.
Form Number: FC–4.
Type of Review: Extension.
Title: Quarterly Consolidated Report of Assets, Liabilities, and Positions in Specified Currencies of Foreign Branches and Subsidiaries of Firms in the United States.
Description: This report is required by Title II of Pub. L. 93–110 (31 U.S.C. 5315) and used by the Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Respondents are large Multinational Nonbanking Firms.
Respondents: Businesses or other for-profit.
Estimated Burden: 1,654 hours.

OMB Number: 1505–0014.
Form Number: FC–3.
Type of Review: Extension.
Title: Monthly Report of Assets, Liabilities, and Positions in Specified Foreign Currencies of Firms in the United States.
Description: This report is required by Title II of Pub. L. 93–110 (31 U.S.C. 5315) and used by the Federal Reserve System in connection with Foreign Exchange Operations conducted for Treasury. Also published as aggregate data in Treasury Bulletin quarterly. Respondents are large Multinational Nonbanking Firms.
Respondents: Businesses or other for-profit.
Estimated Burden: 1,250 hours.
Clearance Officer: Dale A. Morgan (202) 343–0263, Departmental Offices, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Robert Fishman (202) 395–7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 88–4760 Filed 3–3–88; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 26, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB

reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasurer, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0978.

Form Number: None.

Type of Review: Revision.

Title: Taxpayer Survey Form.

Description: The Internal Revenue Service requires a means of assessing the quality of service provided to the public. Public perception/opinion is an important part of this process. This form will be used to assist in these efforts.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 1,200 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88–4709 Filed 3–3–88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; the Art of Paul Gauguin; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Art of Paul Gauguin," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the National Gallery of Art in Washington, DC, beginning on or about May 1, 1988, to on or about July 31, 1988, and at the Art Institute of Chicago, beginning on or about September 17, 1988, to on or about December 11, 1988, is in the national interest.

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: March 1, 1988.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88–4788 Filed 3–3–88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Merit Review Boards; Renewals

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the 14 Merit Review Boards in designated medical specialties have been renewed for a two year period beginning February 5, 1988 through February 5, 1990.

Dated: February 22, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–4745 Filed 3–3–88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 43
Friday, March 4, 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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 6057, Monday, February 29, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., (eastern time) Tuesday, March 8, 1988.

CHANGE IN THE MEETING:

Open Session

The following item has been added to the open portion of the meeting.

"Request to Approve the Award of a Contract for a New Telecommunications System in the Equal Employment Opportunity Commisson's New Headquarters Location"

Closed Session

"Litigation Authorization: General Counsel Recommendations" has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634–6748.

Date: March 2, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued March 2, 1988.

[FR Doc. 88–4878 Filed 3–2–88; 3:03 pm]

BILLING CODE 6750-06-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 2, 1988.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 87–25—Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Taiwan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88–4832 Filed 3–2–88; 11:44 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 15, 1988.

PLACE: Hearing Room A, Interstate Commerce Commission 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

PURPOSE: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for public observation, no public participation is permitted.

MATTER TO BE DISCUSSED:

Finance Docket No. 308800
Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Missouri-Kansas-Texas Railroad Company, et al.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

[FR Doc. 88–4629 Filed 3–2–88; 11:23 am]

BILLING CODE 7035-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, March 21, 1988.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTER TO BE CONSIDERED:
Adjudication of cases dealing with jurisdictional questions or the timeliness of the petitions for review or petitions for appeal.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Date: March 1, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88–4876 Filed 3–2–88; 2:46 pm]

BILLING CODE 7400-01-M

Corrections

Federal Register
Vol. 53, No. 43
Friday, March 4, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H-FRL-3281-9]

Reportable Quantities (RQs) for Releases of Lead, Methyl Isocyanate (MIC); Delisting of Ammonium Thiosulfate

Correction

In proposed rule document 88-3902 beginning on page 6762 in the issue of Wednesday, March 2, 1988, make the following correction:

On page 6767, in the third column, in amendatory instruction 2, in the third line, "footnote " " is" should read "footnote "# #" ".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0106]

Digestive Aid Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 88-1782 beginning on page 2706 in the issue of Friday, January 29, 1988, make the following corrections:

1. On page 2706, in the second column, in the second complete paragraph, in the first line, the section designation should read "§ 330.10(a)(10)".

2. On page 2707, in the third column, in paragraph 2., in the 11th line, "fact" should read "act".

3. On the same page, in the same column, in the last paragraph, in the fourth line, "indicating" should read "indications".

4. On page 2711, in the second column, in the 13th line from the bottom, "497" should read "479".

5. On page 2712, in the third column, in paragraph number 4., in the sixth line, "basic" should read "basis".

§ 357.303 [Corrected]

6. On page 2713, in the third column, in § 357.303, in the seventh line, after "gas)", remove the comma.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Drug and Biological Designations

Correction

In notice document 88-1720 beginning on page 2680 in the issue of Friday, January 29, 1988, make the following corrections:

1. On page 2680, in the first column, under **SUMMARY**, in the eighth line, "Food, and Drug", should read "Food, Drug".

2. On page 2681, in the table, in the third column, in the fifth entry, in the first line, "health" should read "Health".

3. On the same page, in the table, in the same column, in the seventh entry from the bottom, in the 1st and 2nd lines, remove the commas after "Hoechst-Roussel" and "North".

4. On page 2683, in the table, in the first column, in the 11th entry, in the first line, remove the comma after "Sodium".

5. On the same page, in the same table, in the second column, in the first entry, in the 4th and 5th lines, "transcarbamylase" and "synthetase" were misspelled.

6. On the same page, in the same table, in the same column, in the eighth entry from the bottom, "nephropathic" was misspelled.

7. On the same page, in the same table, in the third column, in the third entry, in the first line, remove the comma after "Burroughs".

8. On the same page, in the same table, in the same column, in the sixth entry, in the third line, "1511" should read "11511".

9. On page 2685, in the same table, in the first column, in the fourth entry, in the first line, "^{10})-D-Tri^{6}-" should read "^{10})-D-Trp^{6}-".

10. On the same page, in the same table, in the same column, in the fifth entry from the bottom, in the first line, "oxymorphone" was misspelled.

11. On the same page, in the same table, in the second column, in the seventh entry, "Duchenne" was misspelled.

12. On page 2686, in the same table, in the second column, in the third entry from the bottom, in the second line, "section" should read "secretion".

13. On page 2687, in the same table, in the second column, in the fourth entry, in the second line, "cryptosporidiosis" was misspelled.

14. On the same page, in the same table, in the same column, in the fifth entry from the bottom, in the first line, "congenital coagulopathies" was misspelled.

15. On page 2688, in the same table, in the third column, in the third entry, in the first line, "Cornwallis" was misspelled.

BILLING CODE 1505-01-D

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 87-7]

Cable Compulsory License Specialty Station and Significantly Viewed Signal Determinations; Inquiry

Correction

In proposed rule document 88-4034 beginning on page 5591 in the issue of Thursday, February 25, 1988, make the following corrections:

1. On page 5591, in the third column, in the last paragraph, in the eighth line, after "system" insert "of any signal lawfully permitted to be carried by a cable system".

2. On page 5592, in the first column, in the first complete paragraph, in the sixth line, "40" should read "49".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16257; 812-6877]

Canadian Dollar Portfolio L.P., et al.; Notice of Application

Correction

In notice document 88-3177 beginning on page 4485 in the issue of Tuesday, February 16, 1988, make the following correction:

On page 4485, in the third column, under *Summary of Application*, in the 12th line, "50" should read "5%".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ANE-23; Amdt. 39-5817]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-209, -217, -271A, -217C, and -219 Turbofan Engines

Correction

In rule document 88-2264 beginning on page 3002 in the issue of Wednesday, February 3, 1988, make the following corrections:

1. On page 3004, in the first column, after the **Authority**, in the next line, the section designation should read "§ 39.13".

§ 39.13 [Corrected]

2. On the same page, in the same column, after amendatory instruction 2, in § 39.13, in the second line, "-2178A, -218C" should read "-217A, -217C".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 5]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Consumer Information Regulations

Correction

In proposed rule document 87-29715 beginning on page 49038 in the issue of Tuesday, December 29, 1987, make the following corrections:

§ 571.108 [Corrected]

1. On page 49048, in the third column, in § 571.108, in paragraph S7.5(b), in the fifth line, "tupe" should read "Type".

2. On page 49050, in the first column, in § 571.108, in paragraph S7.6(h), in the fourth line, insert "1" before "degree".

3. On page 49051, in the first column, in § 571.108, in paragraph S7.7.5.2(a)(1)(iv), in the second line, "½" should read "1.2".

4. On page 49052, in the first column, in § 571.108, in paragraph S8.3(b)(1), in the second line, "±" should read "+".

5. On the same page, in the second column, in § 571.108, in paragraph S8.4(b), in the ninth line, after "shall" insert "not".

Note: For a National Highway Traffic Safety Administration correction to this document, see the Proposed Rules section of this issue.

BILLING CODE 1505-01

federal register

Friday
March 4, 1988

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 349 and 369

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Monograph; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 349 and 369

[Docket No. 80N-0145]

Ophthalmic Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) ophthalmic drug products (drug products applied to the eyelid or instilled in the eye), other than antiinfective OTC ophthalmic drug products, are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and new data and information on OTC ophthalmic drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA. Elsewhere in this issue of the **Federal Register**, FDA is reopening the administrative record for OTC ophthalmic drug products to include only those data on antiinfective ingredients that were submitted after the closing of the administrative record. The administrative record will remain open until July 5, 1988, for submission of public comments on that data.

EFFECTIVE DATE: March 6, 1988.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 1980 (45 FR 30002), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC ophthalmic drug products, together with the recommendations of the Advisory Review Panel on OTC Ophthalmic Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by August 4, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by September 3, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC ophthalmic drug products was published in the **Federal Register** of June 28, 1983 (48 FR 29788). Interested persons were invited to file by August 29, 1983, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by October 27, 1983. New data could have been submitted until June 28, 1984 and comments on the new data until August 28, 1984.

In considering the antiinfective portion of the ophthalmic monograph, the agency has determined that there are complex scientific issues that need to be resolved before a final determination can be made with respect to ingredients in this class. These issues do not directly relate to the other segments of the ophthalmic monograph. Accordingly, in order to complete the publication of other segments of the ophthalmic final monograph without undue delay, the agency is not including an antiinfective segment in this document. Elsewhere in this issue of the **Federal Register**, FDA is reopening the administrative record for OTC ophthalmic drug products to include only those data on antiinfective ingredients that were submitted after the closing of the administrative record. The administrative record will remain open until July 5, 1988, for submission of public comments on that data. The agency intends to publish its final decision on ophthalmic antiinfectives in a future issue of the **Federal Register**. Final agency action for the other segments of the ophthalmic drug product rulemaking occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC ophthalmic drug products.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC ophthalmic drug products (48 FR 29788), the agency advises that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after March 6, 1989, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC ophthalmic drug products, one drug manufacturers' association, eight drug manufacturers, two consumer groups, one professional medical organization, and one consumer submitted comments. A request for an oral hearing before the Commissioner was also received on one issue. Copies of the comments and the hearing request received are on public display in the Dockets Management Branch. Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final monograph, the agency has considered the objections, a request for oral hearing, and changes in the procedural regulations.

All "OTC Volumes" cited throughout this document refer to the submissions

made by interested persons pursuant to the call-for-data notice published in the Federal Register of April 26, 1973 (38 FR 10306) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments on OTC Ophthalmic Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the Federal Register of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the Federal Register of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd* 637 F.2d 887 (2d Cir. 1981).

2. Two comments disagreed with the definition of eyewash products proposed in § 349.3(f) and the description of eyewashes proposed in § 349.20 of the tentative final monograph (48 FR 29798). Both comments felt that a statement that these products contain no pharmacologically active ingredients is unnecessary and should be deleted from both the definition and the description of eyewashes. One comment listed the ingredients suggested by the Panel as suitable for buffering or adjusting the pH of ophthalmic solutions (45 FR 30016) and stated that many of these ingredients are pharmacologically active at concentrations higher than the amounts usually present when these ingredients are used as buffers or pH adjusters in eyewash products. The comment contended that manufacturers should not have to be concerned if an ingredient happens to reach a level that is pharmacologically active if no claim for any pharmacologic action is being made for these ingredients. The comment recommended that the description of eyewashes in § 349.20 be amended to read: "These products may only contain water, tonicity agents to establish isotonicity with tears, agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent." The comment added that the definition of eyewashes should be consistent with § 349.20 and proposed the following definition: "Eyewash, eye lotion, irrigating solution. A sterile aqueous solution for bathing or mechanically flushing the eye containing tonicity agents to establish isotonicity with tears and agents to establish pH and buffering to achieve the same pH as tears." The second comment asserted that a definition without the phrase "containing no pharmacologically active ingredients" is more appropriate because classes of products should be defined positively, in terms of what those products are or what they contain, rather than what they are not or do not contain. The comment suggested substituting the word "washing" for the term "flushing" for additional clarity.

The agency agrees with the comments that the statement that eyewashes "contain no pharmacologically active ingredients" is unnecessary. As one of the comments noted, this statement may be unclear because many of the ingredients present in low concentrations in eyewashes as buffers or pH adjusters are pharmacologically active at higher concentrations. The agency also agrees that, wherever possible, classes of products should be defined positively by stating what those products contain, rather than what they do not contain. Therefore, in this final monograph, the agency is deleting the words "contain no pharmacologically active ingredients" from the product description for eyewashes in § 349.20 and is revising the statement to read: "These products contain water, tonicity agents to establish isotonicity with tears, agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent."

In addition, the agency is deleting the words "containing no pharmacologically active ingredients" from the definition for eyewash, eye lotion, and irrigating solution in § 349.3(f). The agency also believes that the word "mechanically" is unnecessary in this definition and thus is revising the definition to read: "A sterile aqueous solution intended for washing, bathing, or flushing the eye."

B. Comments on OTC Ophthalmic Drug Ingredients

3. One comment contended that boric acid meets the definition of an astringent and an eyewash as stated in the notice of proposed rulemaking (48 FR 29791): For astringents—"helps to clear mucus from the outer surface of the eye." and For eyewashes—"bathes or mechanically flushes the eye." The comment stated that "some cognizance must be taken of the long history of mishap-free use of mild boric acid solution in eyewashes, etc." The comment maintained that, although boric acid is not bactericidal, it has demonstrated some bacteriostatic properties, is a pharmaceutical necessity as a pH buffer and a preservative, and its "efficacy in ophthalmic preparations is more of an astringency action than a therapeutic action." The comment further noted that ophthalmologists often prescribe mild boric acid solution and that the product is a standard first aid item, which is noncorrosive, nonirritating, and nonmutagenic.

The "definitions" cited by the comment appeared at 48 FR 29791 as "claims based on the Panel's definitions" and are partial excerpts from the definition of each of these ophthalmic drug classes proposed in § 349.3 of the tentative final monograph (48 FR 29797 and 29798). The complete definitions read as follows: "*Astringent.* A locally acting pharmacologic agent which, by precipitating protein, helps to clear mucus from the outer surface of the eye"; and "*Eyewash, eye lotion, irrigating solution.* A sterile aqueous solution containing no pharmacologically active ingredients, intended for bathing or mechanically flushing the eye."

Boric acid was reviewed by the Ophthalmic Panel as an antiinfective ingredient and was found to be safe when used in the amounts contained in OTC ophthalmic drug products; however, the Panel found that there were insufficient data to prove its effectiveness as an ophthalmic antiinfective (45 FR 30029). Although the Ophthalmic Panel did not evaluate boric acid as an ophthalmic astringent, the Advisory Review Panel on OTC Miscellaneous External Drug Products included boric acid in its review of astringent drug products. That Panel did not find any data demonstrating the safety and effectiveness of boric acid when used as an OTC astringent active ingredient and, therefore, classified it as Category II for that purpose. (See the Federal Register of September 7, 1982; 47 FR 39426 and 39444.) The comment did not submit any data or cite any references to show that boric acid in an ophthalmic formulation acts as an astringent by precipitating protein. Therefore, because the agency has no

data to establish boric acid as a safe and effective astringent in ophthalmic drug products, it is not including this ingredient as an ophthalmic astringent in this final monograph.

The Ophthalmic Panel found boric acid solutions to be "at best bacteriostatic when in contact with pathogenic bacteria for less than one hour" (45 FR 30029). The Panel stated that studies were needed to establish the usefulness of boric acid in the treatment of eye infections, e.g., the bacteriostatic effects of boric acid must be demonstrated to be sufficiently rapid to be useful in infections of the eye. The Panel acknowledged that boric acid and its sodium salt are used as a buffer system in ophthalmic preparations and that this buffer system is effective and well tolerated in eye drops. The Panel listed boric acid among the buffering agents, but not among the preservative agents, suitable for the formulation of eyewashes and other ophthalmic solutions (45 FR 30016). In the tentative final monograph for OTC ophthalmic drug products, the agency proposed in § 349.20 that eyewash products contain no pharmacologically active ingredients, but contain water, tonicity agents to establish isotonicity with tears, agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent.

Boric acid is not being included as an active ingredient in this final monograph. It is considered an inactive ingredient when used as part of a buffering system in ophthalmic drug products. Inactive ingredients, although not included in OTC drug monographs, must meet the requirements of § 330.1(e) (21 CFR 330.1(e)) that they be suitable ingredients that are safe in the amounts administered and do not interfere with the effectiveness of the product or with tests to be performed on the product. Boric acid may be included as a buffering agent in the formulation of OTC ophthalmic drug products provided that it meets the above criteria. (For further discussion of inactive ingredients, see comment 4 below.)

4. Acknowledging that preservative systems were not addressed in the tentative final monograph, one comment submitted, for the record, data to support a sorbic acid/edetate disodium (EDTA) preservative system for ophthalmic solutions. The data consisted of: (1) Summaries of clinical investigations in support of sorbic acid/EDTA as a suitable preservative system for saline and cleaning solutions for contact lenses, (2) a bibliography of articles on sorbic acid from the scientific literature, (3) summaries of animal testing data, and (4) summaries of laboratory testing data. The comment stated that the Panel concluded in its report that sorbic acid in combination with suitable preservatives might be an effective preservative system (45 FR 30020). The comment pointed out that the sorbic acid/EDTA combination preservative system has been approved as safe and effective in ophthalmic solutions by FDA's Office of Medical Devices and described a variety of currently marketed ophthalmic solutions preserved with sorbic acid/EDTA, such as various wetting, cleaning, and storage solutions for soft (hydrophilic) contact lenses. The comment claimed that a sorbic acid preservative system is less toxic than preservatives such as thimerosal, chlorhexidine, and quaternary ammonium compounds. Although the data submitted were compiled from ophthalmic solutions used with soft (hydrophilic) contact lenses, the comment believed that the sorbic acid/EDTA preservative system has been extensively studied for use in the eye area and that the data support this preservative system in general for OTC ophthalmic drug products.

Sorbic acid and EDTA, used as preservatives, are inactive ingredients. The OTC drug review is an active, not an inactive, ingredient review. The OTC panels occasionally made recommendations with respect to inactive ingredients; however, these recommendations were made for public awareness and were not intended to be included in the OTC drug monographs. Accordingly, the agency is not reviewing the data submitted by the comment in this rulemaking proceeding.

Inactive ingredients, although not included in OTC drug monographs, must meet the requirements of § 330.1(e) (21 CFR 330.1(e)) that they be suitable ingredients that are safe and do not interfere with the effectiveness of the product or with tests to be performed on the product. In addition, § 330.1(a) requires that all products covered by an applicable OTC drug monograph be manufactured in compliance with current good manufacturing practices, as established in 21 CFR Parts 210 and 211.

Section 200.50 (21 CFR 200.50) requires all ophthalmic drug products to be sterile. Paragraph (b)(1) states that liquid ophthalmic drug products packaged in multiple-dose containers should: "contain one or more suitable and harmless substances that will inhibit the growth of microorganisms." In conclusion, based on these regulations, the agency evaluates inactive ingredients used as preservatives on an individual basis for each ophthalmic drug product and does not include such conditions in the applicable OTC drug monograph.

C. Comments on Labeling of OTC Ophthalmic Drug Products

5. Several comments contended that FDA should not prescribe exclusive lists of terms from which indications for use for OTC drugs must be drawn, thereby prohibiting alternative OTC drug labeling terminology to describe such indications which is truthful, not misleading, and intelligible to the consumer. Two comments stated that their views on this subject were presented to FDA in oral and written testimony in connection with the September 29, 1982 agency hearing on the exclusivity policy.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph where exact language has been established and identified by quotation marks in an applicable monograph or other regulation, e.g., 21 CFR 201.63 or 330.1(g). The final rule in this document is subject to the final rule revising the labeling policy.

6. One comment objected to the agency's proposed substitution of the word "doctor" for "physician" in OTC drug labeling. The comment indicated an essential difference between these terms. The term "physician" means "doctor of medicine," whereas the term "doctor" can refer to any of a broad spectrum of academic disciplines. The comment recommended that the agency specify use of the term "physician," as

opposed to the term "doctor," on OTC drug labels to enhance consumers' awareness of the proper individual they should consult if further medical care is needed. The comment also stated that it seemed contradictory to label OTC drugs with their scientific names (e.g., ophthalmic hypertonicity agent) and, at the same time, be concerned that the common term "physician" would confuse consumers.

In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs, including the one for OTC ophthalmic drug products, to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This final monograph provides that option. (See § 349.50(a).)

7. Expressing concern about the labeling "verbiage" proposed in the tentative final monograph for OTC ophthalmic drug products, one comment maintained that the use of this verbiage on small bottles and cartons will deter consumers from reading the labeling, thus decreasing the chances that consumers will be made aware of important information and warnings. The comment recommended "streamlining" and combining the proposed warning for all ophthalmic drug products in § 349.50(b)(1) with the proposed warnings for ophthalmic demulcent drug products in § 349.60(c) (1) and (2) to read: "Do not touch bottle tip to any surface since this may contaminate solution. Replace cap after using. If irritation persists or increases, discontinue use and consult a physician." The comment also recommended that the proposed warning in § 349.50(b)(1) and the warnings proposed for ophthalmic vasoconstrictor drug products in § 349.75(c) (1) through (4) be combined and revised as follows: "Do not touch bottle tip to any surface since this may contaminate solution. Replace cap after using. If irritation persists for more than 72 hours, discontinue use and consult a physician. If you have glaucoma, do not use except under the supervision of a physician. Overuse of this product may produce increased redness of the eye." The comment contended that these revisions would convey the intended message in a concise manner.

The agency recognizes the need for concise wording in the labeling of ophthalmic drug products that are likely to be marketed in small packages. In the tentative final monograph, the agency revised the Panel's recommended labeling statements to include only essential information. (See comment 18 at 48 FR 29795.) The agency emphasizes that its proposed warnings provide information that is essential for the safe and effective use of OTC ophthalmic drug products by the consumer. The comment's suggested combining and "streamlining" of the warnings for OTC ophthalmic demulcent and vasoconstrictor drug products deletes some of the warnings proposed by the agency. The comment neglected to include the statements about "eye pain," "changes in vision," and "continued redness" in its suggested warning statements. The Panel felt that this type of information was necessary in the labeling for these products (45 FR 30024), and the agency concurs. In the proposed rulemaking for OTC ophthalmic drug products, the agency modified the wording of this information without changing the Panel's intent in order to make the warning more understandable to consumers. (See comment 16 at 48 FR 29794.)

The general term "irritation," suggested by the comment, does not inform the consumer of specific symptoms which may indicate a serious condition requiring medical attention. The comment also suggested deleting the warning "If solution changes color or becomes cloudy, do not use." The agency feels that this statement is necessary because it alerts the consumer against using a possibly defective product. The comment's suggested revision of the warning for ophthalmic demulcent drug products deletes the phrase limiting the OTC use of the product to 72 hours. The agency believes that such a limitation is necessary. (See comment 9 below.) The comment's proposed alternatives do not provide the consumer with all of the essential warning information; therefore, the warnings for ophthalmic demulcents and vasoconstrictors proposed in §§ 349.60(c) and 349.75(c), respectively, are being included in this final monograph without the requested changes.

The agency believes that the warning proposed in § 349.50(b)(1) of the tentative final monograph may be shortened without changing its intent. Although the comment's suggested rewording shortened the warning, it also changed the emphasis of the warning by rearranging it and changed the intent of the warning by stating that it applies only to solutions, whereas it equally applies to ointments. The agency is revising the warning and including it in § 349.50(c)(1) of the final monograph to read in part as follows: "To avoid contamination, do not touch tip of container to any surface * * *." This wording is also included in a warning in § 349.50(c)(2) to accommodate single-use packages. (See comment 8 below.)

The agency concludes that all of the warnings included in this final monograph are essential to ensure the proper and safe use of OTC ophthalmic drug products by the public. Therefore, all the warnings need to appear on OTC ophthalmic drug products regardless of the size of the container. In those instances where an OTC ophthalmic drug product is packaged in a container that is too small to include all the required labeling, the product can be enclosed in a carton or be accompanied by a package insert that contains the information complying with the monograph. The labeling provisions in Part 201 (e.g., §§ 201.10(i), 201.15, 201.60, 201.61, and 201.62) address various requirements for labeling drugs including drugs packaged in containers too small to accommodate a label with sufficient space to bear all the information required for compliance with various regulations. When an OTC ophthalmic drug product is packaged in a container that is too small or otherwise unable to accommodate a label with sufficient space to bear all of the information required by this final monograph, the required information shall appear elsewhere in the label in accord with the labeling requirements in Part 201. Manufacturers are also encouraged to print a statement on the product container label, carton, or package insert suggesting that the consumer retain the carton or package insert for complete information about the use of the product when all the required labeling does not appear on the product container label.

8. One comment pointed out that the part of the warning proposed in § 349.50(b)(1) that reads "replace cap after using" is inappropriate for ophthalmic drug products which are packaged in single-use containers. The comment suggested that wording such as "Do not reuse—Once opened, discard" be permitted for single-use packages.

The agency agrees that an alternative warning statement is appropriate for single-use ophthalmic drug products. Therefore, in this final monograph, the agency is specifying that the warning in § 349.50(c)(1) applies to multi-use

containers and is including an alternative warning for single-use packages in § 349.50(c)(2) as follows:

For ophthalmic drug products packaged in single-use containers. "To avoid contamination, do not touch tip of container to any surface. Do not reuse. Once opened, discard."

9. One comment recommended deletion of the phrase limiting use to 72 hours from the warning for OTC ophthalmic demulcent drug products proposed in § 349.60(c)(1), which reads: "If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists for more than 72 hours, discontinue use and consult a doctor." The comment argued that there are no medical reasons for restricting the use of an ophthalmic demulcent product and noted that, currently, ophthalmic demulcent products, particularly those used to relieve dry eye syndrome, are recommended for use as often as necessary. The comment also pointed out that contact lens lubricating solutions, which are used as often as necessary, may contain the same active ingredient as ophthalmic demulcent products (i.e., hydroxypropyl methylcellulose).

In the tentative final monograph, the agency combined and modified two long warning statements recommended by the Panel and proposed the above warning for all OTC ophthalmic drug products except hypertonicity agents and eyewashes. (See comment 16 at 48 FR 29794.) In doing so, the agency retained the Panel's recommendation that consumers should not self-medicate for more than 72 hours without consulting a doctor. This warning was combined with information about discontinuing use and consulting a doctor if the condition worsens or persists during this time, and with information on certain conditions under which use should be discontinued.

The agency also discussed a 72-hour limitation in the tentative final monograph. (See comment 17 at 48 FR 29794.) The agency disagrees with the comment's contention that OTC ophthalmic demulcent drug products may be used as often as necessary and need not carry the warning "if the condition worsens or persists for more than 72 hours, discontinue use." OTC ophthalmic demulcent drug products are used to treat conditions such as minor irritation and dryness of the eye. OTC ophthalmic demulcent drug products are distinguishable from contact lens lubricating solutions, which are not used to relieve disease symptoms. Rather, contact lens lubricating solutions are accessories to a medical device and, therefore, may be indicated for daily use. The Panel strongly recommended limiting self-medication with OTC ophthalmic drug products to 72 hours because the symptoms treated may indicate a serious condition requiring treatment by a physician. The Panel specifically addressed the treatment of dry eye with OTC ophthalmic demulcent products and recommended that long-term use be allowed only under the direction of a physician (45 FR 30008). The Panel stated that while "these products are intended to serve as tear substitutes and are used on an ongoing basis, safeguards against the unsupervised use of tear substitute preparations for long periods must be established through proper labeling to warn consumers that professional consultation should be sought if symptoms persist for more than 72 hours." The agency agrees with the Panel's recommendation and is including a 72-hour time limit in the warnings for OTC ophthalmic demulcent drug products in this final monograph.

10. Several comments objected to FDA's requirement that data be submitted to support use of the term "tired eyes" in the labeling of OTC ophthalmic drug products. (See comment 10 at 48 FR 29792.) Two of the comments contended that the agency's use of informal rulemaking to declare that certain words are false or misleading is unauthorized by statute and improper "irrespective of whether such data will be made available" to show that consumers equate "tired eyes" with symptoms of minor irritation and redness in the eyes. One of these comments maintained that the term "tired eyes" should be allowed to continue in use until evidence is produced to show that consumers are being deceived or misled by it.

Another comment contended that the term "tired eyes" should be allowed as an indication for eyewashes and for ophthalmic vasoconstrictor drug products, and an additional comment proposed that the term "tired eyes" should be allowed as an indication for ophthalmic demulcent drug products as well as for ophthalmic vasoconstrictor drug products. The comment submitted a report summarizing two marketing research surveys of users of eye drops to support its request (Ref. 1). The first survey had two parts. In one part, consumers chose their own words to describe their reasons for using eye drops. In the second part, the same consumers rated the importance of 58 product features or benefits enumerated by the market research firm. In the second study, the subjects were given cards, each stating a product feature or benefit, and were asked to rate the importance of each feature or benefit in choosing an eye drop product. The comment contended that the results of the studies make it apparent that users of eye drops "express" the feeling of eye discomfort with the term "tired eyes."

The agency has previously addressed the legality of the OTC drug review procedures. (See comment 1 above.) The classification of a labeling claim and the requirement for data to support the general recognition of that labeling claim in an OTC drug monograph are consistent with the OTC drug review procedures.

The Panel felt that the term "tired eyes" implies fatigue as a result of normal visual activities such as reading, watching television, or doing close work (45 FR 30023 and 30024) and that phrasing that promises benefits from using OTC ophthalmic drug products for such a condition is unproven and thus unacceptable. It recommended a Category II classification for the "tired eyes" claim in the advance notice of proposed rulemaking. Two comments to the advance notice of proposed rulemaking requested that the claim "tired eyes" be removed from Category II. Both comments claimed that the term "tired eyes" as used by consumers describes the appearance of minor irritation and redness in the eyes. One of the comments added that such use has been shown through market research. In the tentative final monograph (48 FR 29792), the agency pointed out that neither comment had submitted data showing that "tired eyes" is a condition which benefits from the use of OTC ophthalmic drug products and agreed with the Panel that product claims for benefits to "tired eyes" are scientifically unfounded. However, in order to provide the comments an opportunity to support their claims, the agency reclassified the term from Category II to Category III and stated that if adequate data were submitted to show that consumers equate "tired eyes" with minor irritation and redness in the eyes, i.e., conditions that benefit from the use of OTC ophthalmic drug products, the agency would consider reclassifying the term to Category I.

In order to establish a Category I indication for an OTC drug product, data are necessary to show that a consumer with a well-defined and clearly-understood condition receives therapeutic benefits from the use of the product. The market research surveys submitted in support of "tired eyes" as a Category I indication were not designed to provide such data. Although the

surveys show that the term "tired eyes" in the labeling of ophthalmic drug products is familiar to consumers, they provide no data demonstrating that consumers equate "tired eyes" with minor irritation or redness in the eyes, two conditions which have been shown to benefit from the use of OTC ophthalmic drug products. Therefore, the agency is not including "tired eyes" as an indication for any of the ophthalmic drug classes in this final monograph.

However, since publication of the tentative final monograph, the agency has revised its labeling policy for OTC drug products. (See comment 5 above.) FDA has determined that it is not practical—in terms of time, resources, and other considerations—to set standards for all labeling found in OTC drug products. Accordingly, OTC drug monographs regulate only labeling related in a significant way to the safe and effective use of covered products by lay persons. OTC drug monographs establish allowable labeling for the following items: product statement of identity; names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action. Truthful and nonmisleading terms that provide additional information about an OTC drug product but are not directly related to its safe and effective use are considered outside the scope of the OTC drug review and may appear elsewhere in the labeling, separate from the monograph approved statements. Because the submitted surveys demonstrate that consumers are familiar with the term "tired eyes" in the labeling of OTC ophthalmic drug products, the agency considers "relief of tired eyes" acceptable additional information but not an indication for the labeling of an OTC ophthalmic drug product.

As discussed in comment 16 below, the agency is concerned about the danger of overuse or unnecessary use of OTC ophthalmic vasoconstrictor drug products and wants to assure that a vasoconstrictor is only used for one specific symptom: redness due to minor eye irritations. Neither the submitted surveys nor any other information submitted to the agency provide data showing that the term "tired eyes" means redness to consumers. The agency believes that the term "tired eyes" might encourage consumers to use a vasoconstrictor unnecessarily for the relief of symptoms other than redness of the eye due to minor eye irritations. For this reason, the agency concludes that "tired eyes" may not be used on any part of the labeling of OTC ophthalmic vasoconstrictor drug products.

Although "tired eyes" is considered outside the scope of the review for some OTC ophthalmic drug products, it will be evaluated by the agency on a product-by-product basis, under the provision of section 502 of the act (21 U.S.C. 352) relating to labeling that is false or misleading. In addition, any term that is outside the scope of the review, even though it is truthful and not misleading, may not appear in any portion of the labeling required by the monograph and may not detract from such required information. Such terms may be included elsewhere in the labeling.

Reference

(1) Comment No. C00992, Docket No. 80N-0145, Dockets Management Branch.

11. Several comments requested that the terms "cooling" or "cools," "soothing" or "soothes," "refreshing" or "refreshes," and "comforting" be allowed as indications for ophthalmic demulcent and vasoconstrictor drug products. In support of its request, one comment submitted a report summarizing two market research surveys on consumer terminology among eye drop users (Ref. 1). The comment stated that the "study indicates that when eye drop users were asked to give their reasons for using eye drops, a substantial number of the users responded that they sought to 'soothe,' 'cool,' or make their eyes feel 'comfortable'," and that, furthermore, "when a group of users was asked to select the degree of importance of 49 product features or benefits, 79 percent of the users responded that the 'soothing' effect of eye drops was, at least, 'very important.'" Another comment requested that product attributes such as "cooling," "soothing," or "refreshing" be included in a section on other allowable statements for OTC eyewash products in the ophthalmic final monograph. The comment stated that these terms reflect the neutral, isotonic attributes of eyewashes.

The agency has reviewed the market research report and finds that the two studies indicate that many users want the "soothing" and "cooling" they get from eyedrops, but the studies do not support the request that terms such as "comforting," "cooling," "soothing," and "refreshing" should be permitted as indications for ophthalmic demulcent and vasoconstrictor drug products. Because the participants were asked to select terms from a list of "features and benefits" enumerated by the marketing research firm instead of using their own words, the "features and benefits" sections of the surveys are not very useful for assessing consumer terminology. Also, the data were not summarized separately for vasoconstrictor and demulcent users; thus, the responses of the different groups of users cannot be assessed.

The "reasons for using eye drops" section of the first survey is more useful for assessing consumer terminology because consumers use their own words to express their reasons for using eye drops; about half of the responses stated that eye drops were used to "soothe," to "cool," or for "tiredness." However, the terms "soothe/cool/tiredness" were grouped together in the survey's summary, as were the responses from the users of vasoconstrictor and demulcent eye drops. Although the summary indicates that many users want the "soothing" and "cooling" they get with eye drops, there is no way to assess the response rate for the separate terms nor to assess how the different groups of eye drop users responded to the question of why they used eye drops.

The agency recognizes that terms such as "soothing," "cooling," "refreshing," and "comforting" reflect formulation attributes of some products, but does not agree that the terms are appropriate indications for OTC ophthalmic drug products. The Panel stated in its report that indications for the use of ophthalmic preparations "should be simply and clearly stated, should provide the user with enough information for effective and safe use of the preparation, and should include the statement that the preparation is for the temporary relief of symptoms applicable to the ingredients it contains" (45 FR 30023). In addition, the Panel addressed the term "soothing" as a product attribute and defined product attributes as terms that describe certain physical and chemical qualities of OTC ophthalmic drug products (45 FR 30024). However, the Panel emphasized, and the agency agrees, that these terms are not indications for use, but merely factual statements related to product performance.

The agency has no objection to the use of terms, such as "soothing," "cooling," "refreshing," or "comforting," that describe certain physical and chemical qualities of a drug, as long as these terms are appropriate for the product and do not imply that any therapeutic effect might occur, are true and not misleading, and are distinctly separated from labeling indications. For example, the terms "soothing" or "comforting" may be appropriate for

ophthalmic emollient and demulcent drug products because they describe physical and chemical qualities of these drugs. However, terms such as "soothing" or "comforting" are not appropriate for ophthalmic vasoconstrictor drug products because these terms do not describe physical or chemical qualities of these drugs. Terms describing a product's characteristics (e.g., color, odor, flavor, and feel) appear in the labeling for the consumer's information. The agency concludes that it is not necessary to include terms such as these in the final monograph for OTC ophthalmic drug products.

Reference

(1) "Marketing Research Among Eye Drop Users Concerning Consumer Terminology," Comment No. C00992, Docket No. 80N-0145, Dockets Management Branch.

12. One comment objected to the tentative final monograph limiting the statement of identity of OTC ophthalmic drug products to only one or two terms in most cases and urged the agency to allow manufacturers alternative ways of describing the statement of identity as provided in existing agency regulations. The comment cited 21 CFR 201.61 as requiring the label to include the established name of the drug, if any, followed by an accurate statement of the general pharmacological category(ies) of the drug.

Two comments contended that either the term "eye drops" or the term "decongestant eye drops" should be allowed as a statement of identity for ophthalmic vasoconstrictor drug products. Both comments argued that consumers have used hundreds of millions of these products for many years under the term "eye drops" and that changing this term now may lead to consumer confusion. One comment felt that the term "decongestant eye drops" is well understood by consumers and that the agency's proposed term "eye redness reliever" might actually confuse consumers. The comment stated that the term "eye redness reliever" appears to be an incomplete reference to the decongestant action of vasoconstrictor ophthalmic products because that term does not refer to the drug's principal action of relieving minor eye irritation and accompanying symptoms, such as redness, itching, stinging, etc. The second comment urged that for combination ophthalmic drug products that have no established name, any reasonable statement of general pharmacologic action or principal intended action such as "eye drops for the relief of eye irritation and redness" be allowed in the statement of identity.

Wherever possible, the agency prefers to use the general pharmacologic category as the statement of identity for OTC drug products; however, where this is not appropriate, the principal intended action is used. The term "eye drops" by itself does not inform the consumer of the pharmacologic category or the principal intended action of a drug product.

As explained in the tentative final monograph for OTC ophthalmic drug products, the agency believes that the term "decongestant" is not readily understood by consumers as it applies to the eye (48 FR 29792). Vasoconstrictor ingredients are used in nasal decongestant drug products as well as in ophthalmic drug products. The decongestant action of vasoconstrictor ingredients in nasal drug products refers to the shrinking of nasal mucosa in the treatment of mucosal congestion accompanying hay fever, allergic rhinitis, sinusitis, and other respiratory conditions (Ref. 1). The action of these same vasoconstrictor ingredients when topically applied to the eye refers to the constriction of blood vessels resulting in the whitening of the conjunctiva by reducing redness (Ref. 2). The agency believes that consumers more commonly equate decongestant action with relief from the nasal stuffiness and general irritation related to respiratory conditions than with the relief of redness of the eyes. Thus, the agency considers that "decongestant eye drops" is a poorly understood phrase, and that "eye redness reliever" better describes in layman's terms the principal action of an OTC ophthalmic vasoconstrictor and is readily understood by consumers. Furthermore, the term "eye redness reliever" is currently used in the labeling of OTC ophthalmic vasoconstrictor drug products.

The agency believes that, contrary to the comment's assertion, the term "eye redness reliever" is a complete and accurate description of the principal action of an OTC ophthalmic vasoconstrictor ingredient, which is used to relieve redness in the eye and not for any other symptom. In its report, the Panel recommended that vasoconstrictor ingredients be used only if redness is present along with minor irritation of the eye. For the symptomatic relief of itching, tearing, and smarting, the Panel recommended eye washes, astringents, demulcents, or emollients (45 FR 30009). (See also comment 15 below.)

The agency disagrees with the suggestion by one of the comments that any reasonable statement of general pharmacologic action would suffice as a statement of identity for combination products with no established name. For OTC combination ophthalmic drug products, the agency requires that the statement of identity include the statement of identity for each of the active ingredients as set forth in the final monograph. This approach is consistent with that used for all other types of OTC combination drug products. (See also comment 13 below.)

The agency recognizes that OTC ophthalmic vasoconstrictor products have been marketed for years as "eye drops" and does not oppose the inclusion of this term in the statement of identity in addition to the required pharmacological category for each class of ophthalmic drug product. In this final monograph, the agency is modifying, where appropriate, the statement of identity for OTC ophthalmic drug products to allow for a choice of a term describing the appropriate dosage form of the product, i.e., "drop," "lotion," or "ointment," as well as to allow for a choice between the terms "ophthalmic" and "eye." For example, the statement of identity for ophthalmic vasoconstrictor drug products in § 349.75(a) will read: "The labeling of the product contains the established name of the drug(s), if any, and identifies the product as a 'redness reliever' or a 'vasoconstrictor (redness reliever)' (select one of the following: 'eye' or 'ophthalmic') '(insert dosage form, e.g., drops).' "

References

(1) Weiner, N., "Norepinephrine, Epinephrine, and the Sympathomimetic Amines," *in* "The Pharmacological Basis of Therapeutics," 6th Ed., Edited by A.G. Gilman, L.S. Goodman, and A. Gilman, MacMillan Publishing Co., Inc., New York, p. 168, 1980.

(2) Newell, F.W., "Ophthalmology: Principles and Concepts," 5th Ed., The C.V. Mosby Co., St. Louis, p. 149, 1982.

13. One comment objected to the tentative final monograph limiting the statement of identity of OTC ophthalmic drug products to only one or two terms in most cases and urged the agency to allow manufacturers alternative ways of describing the statement of identity as provided in existing agency regulations. The comment cited 21 CFR 201.61 as requiring that if the drug is a combination which has no established name, the statement of identity may be a prominent and conspicuous statement of the general pharmacological action(s) in terms which are meaningful to laymen.

The comment objected to the agency's proposal that the statement of identity for eyewashes contain the established

name of all the components identified in § 349.20, all of which are inactive ingredients by FDA's definition. The comment asserted that the agency's explanation for this action, i.e., conformation to the requirements of section 502(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)), is unfounded on two counts: (1) Section 502 applies to drugs and devices, and an eyewash is neither a drug nor a device; and (2) section 502(e) does not empower the agency to require that inactive ingredients be listed on the label of OTC eyewashes. The comment urged that the requirement be deleted from the statement of identity for eyewashes.

In the notice of proposed rulemaking, the agency explained that eyewash products are considered drugs rather than devices (48 FR 29789). The act defines a drug as, in part, an article "intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man * * *," (21 U.S.C. 321(g)). The Advisory Review Panel on OTC Ophthalmic Drug Products discussed the conditions that should be treated with eyewashes. These conditions include inflammation and irritation of the eye caused by loose foreign material, airborne pollutants and allergens, or by chlorinated water (45 FR 30010 and 30047). Eyewashes are used to dilute or remove the offending irritant from the eye. In addition, the solutions are used for eye irrigation following diagnostic procedures and for postoperative irrigation (45 FR 30047).

In the tentative final monograph, the agency concurred with the Panel's consideration of eyewashes as drug products and stated that these products are properly regulated as drugs under the act (48 FR 29789). Consistent with the determination that these products are drugs, the agency stated in the proposed rule that the identity statement of these products should conform to section 502(e) of the act (48 FR 29796). Section 502(e) requires the established name of each active ingredient to appear in the labeling for products fabricated from two or more ingredients. Even though the agency stated in § 349.20 that eyewashes contain no pharmacologically active ingredients, it considered each ingredient of the eyewash product to have an active role in the proper functioning of the product. Thus, the agency felt it would be consistent with the labeling for all other OTC drug products to have the established name of all of the components of this particular product appear in the statement of identity section of the labeling.

The agency has reconsidered this proposed requirement. FDA regulations dealing with the statement of identity (21 CFR 201.61(b)) provide that the requirement for a statement of identity for an OTC drug that is a mixture and that has no established name "shall be deemed to be satisfied by a prominent and conspicuous statement of the general pharmacological action(s) of the mixture or of its principal intended action(s) in terms that are meaningful to the layman." The agency has determined that this section of the regulations is applicable to eyewash products and that the description of the principal intended action, i.e., "eyewash," "eye lotion," or "eye irrigating solution," will be sufficiently meaningful to the consumer to satisfy the statement of identity requirements.

Nevertheless, the agency believes that inactive ingredients should be listed in OTC drug product labeling in order to alert consumers with known allergies or intolerances to the presence of these ingredients. The Proprietary Association (PA), which submitted this comment objecting to the component listing requirement for eyewashes, recently announced that its member companies will voluntarily list inactive ingredients in the labeling of OTC drug products under guidelines established by the association (Ref. 1). The agency commends this voluntary action and notes that the action further makes the proposed agency requirement unnecessary. The agency is therefore not including the phrase "contains the established name of all components identified in § 349.20 and" in the statement of identity for eyewashes. The statement of identity (§ 349.78(a) of this final monograph) will read as follows: (a) *Statement of identity.* The labeling of the product identifies the product with one or more of the following terms: "eyewash," "eye lotion," or "eye irrigating solution."

Reference

(1) "Proprietary Association Adopts Voluntary Disclosure of Inactive Ingredients," News Release, The Proprietary Association, Washington, DC, May 14, 1984, copy included in OTC Volume 100FM.

14. Expressing concern about the labeling "verbiage" proposed in the tentative final monograph for OTC ophthalmic drug products, one comment maintained that the combination of this verbiage and small bottles and cartons will deter consumers from reading the labeling, thus decreasing the chances that consumers will be made aware of important information and warnings. The comment recommended revising the indications for ophthalmic demulcent drug products proposed in § 349.60(b) (1) through (4) to read: "To temporarily relieve burning and discomfort due to dryness of the eyes and minor eye irritation. Also, to protect against further irritation." The comment also recommended that the indication proposed for ophthalmic vasoconstrictor drug products in § 349.75(b) be revised to read as follows: "To remove redness and help relieve minor eye irritation." The comment contended that these revisions would convey the same message in a concise manner.

The agency recognizes the need for concise wording in the labeling of ophthalmic drug products that are likely to be marketed in small packages. (See comment 18 at 48 FR 29795.) For this reason, the agency proposed four concise indication statements that could be used for OTC ophthalmic demulcent drug products. The indication proposed by the comment is not more concise than any one of the agency's proposed indications; rather, it is an attempt to combine all four indications into a single statement. The agency emphasizes that manufacturers need not place all of the indications on the labeling of their products, but may choose one or more of the indications that they wish to use. In addition, the agency has determined that if a manufacturer wishes to use more than one of the indications for an ophthalmic demulcent drug product, the indications may be combined to eliminate duplicate words and phrases as long as the resulting indication is clear and not misleading. The agency is revising the final monograph to allow this to be done. (This provision to combine indications to eliminate duplicative words or phrases is being made for the indications for all OTC ophthalmic drug products in § 349.50(b) of the final monograph.) Therefore, the agency sees no need to revise the wording of the indications for OTC ophthalmic demulcent drug products in § 349.60(b) (1) through (4) as proposed by the comment.

The indication proposed by the agency for ophthalmic vasoconstrictor drug products clearly describes the condition for which such ingredients should be used. The revision suggested by the comment is only slightly shorter but it conveys a different message. The agency's proposed indication states that the product is for relief of redness of the eye due to minor eye irritations, whereas the comment's proposed indication substitutes "and" for "due to" and thus indicates that vasoconstrictor drug products relieve minor eye irritations. (For further discussion of the indications for OTC ophthalmic

vasoconstrictor drug products, see comment 15 below.) The agency believes the indication proposed in the tentative final monograph for ophthalmic vasoconstrictor drug products can be further shortened by changing "For the relief of" to "Relieves" as follows: "Relieves redness of the eye due to minor eye irritations" while still maintaining the meaning of the indication. This shortened indication is included in this final monograph.

15. Two comments requested additional indications for ophthalmic vasoconstrictor drug products and proposed the following statements: "For the relief of minor eye irritation"; "For the relief of minor eye irritation and accompanying symptoms such as (optional, any or all of the following: redness, itching (or itchiness), burning, stinging, or soreness)"; and "For the relief of minor eye irritation due to (select any or all of the following: sun, wind, dust, smoke, contact lenses, plant allergies, colds, strain)."

One comment contended that these statements are truthful and not misleading claims for ophthalmic vasoconstrictor drug products. The other comment offered "Removes redness" as a fourth additional indication and stated that all four indications include terms that consumers commonly associate with OTC ophthalmic vasoconstrictor drug products.

In its discussion of indications for the use of OTC ophthalmic preparations, the Panel stated, in part, that the indications section "should include the statement that the preparation is for the temporary relief of symptoms applicable to the ingredients it contains" (45 FR 30023). The Panel also stated that itching, tearing, smarting, and burning may be relieved by eyewashes, astringents, demulcents, and emollients, and that redness is a symptom of irritation which can be relieved by a vasoconstrictor (45 FR 30009). The action of a vasoconstrictor when applied to the surface of the eye is described in the literature as blanching, bleaching, and whitening of reddened conjunctiva (Refs. 1 and 2). The mechanism by which this occurs is discussed in comment 12 above. Thus, the agency believes that an OTC ophthalmic vasoconstrictor ingredient is indicated for only one specific symptom, i.e., relief of redness in the eye.

The agency finds the first three indications suggested by the comment unsuitable for OTC ophthalmic vasoconstrictor drug products, because they incorrectly emphasize that the product is "for the relief of minor eye irritation," whereas the ophthalmic vasoconstrictor active ingredient is only being used to relieve one symptom of minor eye irritation, that of redness. In its general discussion of ocular vasoconstrictors, the Panel stated that redness resulting from minor ocular irritation may be relieved by aqueous eye drops containing low concentrations of an ocular vasoconstrictor, which functions by constricting blood vessels underlying the surface of the eye that have dilated in response to noxious or irritating agents (45 FR 30033). The indications suggested by the comment emphasize that the product is for the relief of minor eye irritation; however, the agency concludes that such emphasis is inappropriate because the product is only to be used on an OTC basis for relief of the redness resulting from a minor eye irritation. The agency also believes that it is unnecessary to list possible causes of irritation in the indications statement for vasoconstrictors and other classes of ophthalmic drug products. Such lists would detract attention from the indicated symptom and would make the indications longer than necessary for safe and effective use of the product. However, the agency recognizes that the causes for the minor eye irritation resulting in redness of the eyes could be included elsewhere in the labeling as long as they are true and not misleading. The agency does not recognize colds, allergies, or strain as minor irritations which result in redness, but agrees with the Panel that dust and smoke are noxious or irritating agents which could cause redness. The Panel also listed gases, other airborne pollutants as well as smoke, and chlorinated water during swimming as possible causes for redness of the eye that could be relieved with an OTC drug product (45 FR 30010). The Panel recognized exposure to sun or wind as a cause of dryness in the eye treatable with OTC demulcent and emollient ingredients (45 FR 30023), but did not recognize such exposure as a cause of redness. The agency also believes that exposure to sun and wind has a drying effect on the eye which should be treated with OTC demulcent or emollient ingredients, but not with vasoconstrictor ingredients. A combination product containing a demulcent and a vasoconstrictor ingredient (as provided in § 349.30(c)) would be appropriate OTC treatment of irritated eyes which are both dry and red as a result of exposure to sun and wind.

The fourth suggested indication "Removes redness" is almost identical to a phrase in the statement of identity for ophthalmic vasoconstrictor ingredients proposed in § 349.75(a) which states, in part, "eye redness reliever." However, "removes redness" alone is not an appropriate indication for an OTC vasoconstrictor product because it does not include the information that, in order for eye redness to be treated OTC, the redness must be the result of minor irritation. The Panel enumerated serious conditions, such as an embedded foreign body, uveitis, narrow angle glaucoma, or a flash burn, which exhibit redness as a symptom, but which are not amenable to OTC treatment (45 FR 30010 and 30011). The agency believes that OTC treatment of such conditions could lead to serious complications.

The agency is concerned about overuse or unnecessary use of OTC ophthalmic vasoconstrictor ingredients. The Panel strongly recommended against too-frequent or prolonged use of these ingredients, citing the dangers in delaying treatment of serious conditions as well as the risk of adverse side effects, such as excessive cell loss, prolonged constriction of conjunctival blood vessels followed by dilation of these blood vessels or rebound hyperemia, and subjective effects of ocular stinging and burning. (See comment 16 below and 45 FR 30033.) The Panel also pointed out that these ingredients, at higher concentrations, cause dilation of the pupil (mydriasis) and that, even at the low concentrations specified for OTC use, these ingredients may, occasionally, trigger mydriasis, especially in subjects who wear contact lenses, whose cornea is abraded, or who have lightly colored irises (Refs. 3 and 4). This dilation of the pupil may in turn precipitate an attack of narrow-angle glaucoma in a susceptible user (Ref. 5).

Because ophthalmic vasoconstrictors as OTC ingredients are only necessary for the relief of redness in the eye due to minor irritation and because there are risks inherent in the too-frequent or prolonged use of these ingredients, the agency concludes that the single indication for OTC ophthalmic vasoconstrictor ingredients is appropriate. Therefore, the agency is not including the comments' recommended indications in this final monograph. The indication for ophthalmic vasoconstrictor drug products proposed in the tentative final monograph, i.e., "For the relief of redness of the eye due to minor eye irritations," has been shortened to read "Relieves redness of the eye due to minor eye irritations." (See comment 14 above.) This shortened indication for OTC ophthalmic vasoconstrictor drug ingredients is included in § 349.75(b) in the final monograph.

References

(1) Newell, F.W., "Ophthalmology: Principles and Concepts," 5th Ed., C.V. Mosby Co., St. Louis, p.149, 1982.

(2) Havener, W.H., "Ocular Pharmacology," 3d Ed., C.V. Mosby Co., St. Louis, p. 221, 1974.

(3) Sugar, H.S., "The Glaucomas," *in* "Modern Ophthalmology, Topical Aspects," 2d Ed., Edited by A. Sorsby, J.B. Lippincott, Philadelphia, p. 612, 1972.

(4) Obianwu, H.O., and M.J. Rand, "The Relationship Between the Mydriatic Action of Ephedrine and the Colour of the Iris," *British Journal of Ophthalmology*, 49:264–270, 1965.

(5) Weiss, D.I., and R.N. Shaffer, "Mydriatic Effects of One-Eighth Per Cent Phenylephrine: A Potential Cause of Angle-Closure Glaucoma," *Archives of Ophthalmology*, 68:727–729, 1962.

16. One comment objected to the agency's proposed warning (in § 349.75(c)(3)) against rebound hyperemia for ophthalmic vasoconstrictor drug products containing tetrahydrozoline hydrochloride. The comment argued that this warning is not supported by the evidence contained in the record. The comment contended that it is not valid for the agency to cite the Panel's advice that excessive use of these products might produce rebound hyperemia as a reason to require the warning for tetrahydrozoline when several controlled studies referred to in the Panel's report found no rebound hyperemia from the use of tetrahydrozoline hydrochloride (Refs. 1 through 4). The comment added that rebound hyperemia caused by excessive use of nasal products containing naphazoline hydrochloride has no application to tetrahydrozoline hydrochloride. Furthermore, the comment argued that the 157 tetrahydrozoline adverse reaction reports to FDA during the years 1969 to 1982 (Ref. 5) do not establish a single case of rebound hyperemia and attest to a remarkable record of safety for the more than 250 million bottles of ophthalmic tetrahydrozoline hydrochloride used by consumers in that period. The comment agreed that a warning against overuse is appropriate for vasoconstrictors that have been shown to produce rebound hyperemia, but that the warning is not justified for tetrahydrozoline hydrochloride.

In the tentative final monograph, the agency concluded that the labeling of all ophthalmic vasoconstrictor drug products should contain a warning against excessive use and proposed the following: "Overuse of this product may produce increased redness of the eye." The agency stated that the Panel had recommended this warning even after the Panel noted that the studies cited by the comment had not reported rebound hyperemia, that the 157 adverse reaction reports cited by the agency were not reviewed by the Panel, and that these adverse reactions were all reported after completion of the four controlled studies in which rebound hyperemia was not reported.

An updated adverse reaction report on tetrahydrozoline hydrochloride covering the years 1969 to 1984 lists approximately 280 adverse reactions from the OTC use of this drug (Ref. 6); more than 90 of the adverse reactions are reported as "conjunctivitis," and 45 of the total are reported as "no drug effect" (Ref. 6). The term "rebound hyperemia" is not an option in the agency's computer system for recording adverse reactions, and consumers are generally unaware of the meaning of the term; however, among the phrases used by consumers to describe the tetrahydrozoline hydrochloride side effect which is listed by the agency in the adverse reaction report as "conjunctivitis" are "eyes turn redder," eyes are "redder than before," eyes "get blood red," and eyes "turn bloodshot" (Ref. 6). "Does not get red out," "failed to clear redness," and "eyes still red" are some of the phrases used by consumers to describe the tetrahydrozoline hydrochloride side effect which is recorded by the agency in the computer information on tetrahydrozoline hydrochloride adverse reaction report as "no drug effect" (Ref. 5). Because both "conjunctivitis" and "no drug effect" are identified by consumers as "redness of the eye," the agency believes that these reactions could be cases of rebound hyperemia. The agency believes that consumers need to be alerted that overuse of these products may produce increased redness of the eye. Therefore, the agency is including in this final monograph the warning "Overuse of this product may produce increased redness of the eye" for all ophthalmic drug products containing a vasoconstrictor.

References

(1) Grossman, E.E., and R.H. Lehman, "Ophthalmic Use of Tyzine: A Clinical Study of this New Vasoconstrictor," *American Journal of Ophthalmology*, 42:121–123, 1956.

(2) Menger, H.C., "New Ophthalmic Decongestant, Tetrahydrozoline Hydrochloride: Clinical Use in 1,156 Patients with Conjunctival Irritation," *Journal of the American Medical Association*, 170:178–179, 1959.

(3) "Ophthalmic Use of Tetrahydrozoline Hydrochloride (Visine)," *Journal of the American Medical Association*, 173:677, 1960.

(4) Stokes, J.J., "Clinical Evaluation of Tetrahydrozoline Ophthalmic Solution," *Journal of the Medical Association of Georgia*, 47:540–541, 1958.

(5) Adverse Reaction Information on Tetrahydrozoline in OTC Ophthalmic Drug Products Retrieved from the Drug Experience Information System, January 1969 to December 1982, OTC Volume 100TFM, Docket No. 80N–0145, Dockets Management Branch.

(6) Adverse Reaction Information on Tetrahydrozoline Hydrochloride in OTC Ophthalmic Drug Products Retrieved from the Drug Experience Information System, January 1969 to May 1984, OTC Volume 100FM, Docket No. 80N–0145, Dockets Management Branch.

17. One comment objected to "the implicit prohibition" of the phrase "tear substitute" on the label of eyewash products. The comment stated that rigorous interpretation of the agency's ruling is that an ophthalmic product must contain a demulcent in order to be labeled as a tear substitute. The comment added that the agency requires that eyewashes, with no demulcent, must be equivalent to human tears in pH, tonicity, viscosity, absence of active ingredients, etc. The comment pointed out that, in the response to comment 3 in the notice of proposed rulemaking, the agency stated that "eyewash products be similar to tears . . ." (48 FR 29790). The comment requested that the labeling of all eyewash products which conform in composition and physical properties to the requirements of the final rule for ophthalmic drug products be permitted to include the phrase "tear substitute" at the manufacturer's discretion.

The Panel defined the term "tear replacement, tear substitute" as "a preparation intended to counteract dryness in the eye; often used for the relief of symptoms in 'dry eye' in which production volume or quality of tears is inadequate" (45 FR 30007). The agency recognizes that OTC ophthalmic preparations labeled as "artificial tears" contain ophthalmic demulcents. Ophthalmic demulcents provide a mechanical means for lubricating and protecting mucous membranes or abraded surfaces by mimicking the action of mucin, which is the natural demulcent in tears.

Eyewashes (eye lotions, irrigating solutions) are OTC ophthalmic solutions intended for flushing or irrigating the eye to remove loose foreign material, air pollutants, or chlorinated water (48 FR 29799). The agency believes that it would be inappropriate to label these products as "tear substitutes" when their intended use is to bathe or flush the eye to remove a foreign substance. Eyewashes contain no pharmacologically active ingredients, but should be formulated to contain water, tonicity agents to establish isotonicity with tears, agents for

establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent (48 FR 29798). Because an eyewash is intended to be used in the eyes, it should be physiologically compatible with tears; however, unlike an OTC ophthalmic demulcent, an eyewash is not intended to treat dry eyes or to be used as a tear substitute. Therefore, for the reasons stated above, the agency disagrees with the comment and is not accepting the comment's recommendation to permit the use of the term "tear substitute" on the label of OTC eyewashes.

18. Referring to the agency's discussion in the tentative final monograph (see comment 11 at 48 FR 29792) that adverse environmental conditions, such as smog, foreign material, and airborne pollutants can cause symptoms of irritation, discomfort, burning, stinging, smarting, and itching of the eye, and that if the eye is not damaged by such debris, the relief of these symptoms occurs with the removal of the irritating substance with an eyewash, one comment stated that the labeling indications for eyewashes in proposed § 349.78(b) "should reflect the symptomatic relief which FDA states is obtained by the use of an eyewash." The comment stated that claims should be allowed to convey this information to the consumer and requested that the following 10 indications for eyewashes be added to § 349.78:

(1) "Aids in the relief of irritation, discomfort, burning, stinging, smarting and itching due to foreign material, air pollutants such as pollen or smog and/or due to swimming in chlorinated water."

(2) "Aids in the relief of irritation (discomfort) due to the presence of foreign material such as dust or an eyelash in the eye."

(3) "Aids in the relief of burning, itching and stinging of the eyes due to the presence of air pollutants such as smog."

(4) "Aids in the relief of burning, itching and stinging of the eye due to swimming in chlorinated water."

(5) "Aids in the relief of itching of the eyes due to the presence of pollen."

(6) "Bathes (washes) the eye aiding in the relief of irritation due to foreign material."

(7) "Bathes (washes) the eye aiding in the relief of irritation due to smog and other air pollutants."

(8) "Bathes (washes) the eye aiding in the relief of burning and/or itching due to swimming in chlorinated water."

(9) "Bathes (washes) the eye providing cooling, refreshing relief from irritation of the eye due to the presence of foreign material such as air pollutants."

(10) "Bathes (washes) the eye providing cooling, refreshing relief from burning and/or stinging of the eyes due to contact with chlorinated water while swimming."

A second comment questioned whether "flushing" and "irrigating" are the most meaningful terms that could be used in proposed § 349.78(b) to describe to consumers the cleansing function of an eyewash. The comment stated that consumers may associate the word "flushing" with a toilet and "irrigation" with a ditch. The comment urged that proposed § 349.78(b) be expanded to include the following terms: "cleansing," "washing," "bathing," "flooding," and "immersing."

The agency agrees with the comments that the indications for eyewashes could be expanded to include some of the information contained at 48 FR 29792 and to use alternate terms to describe the cleansing function of an eyewash. Ocular irritation, discomfort, burning, stinging, smarting, and itching are symptoms that can be relieved with an eyewash. The symptoms are caused by loose foreign materials, air pollutants, or chlorinated water in the eye. Air pollutants can also be further identified as pollen or smog. The agency believes that the intent of the comment's 10 suggested indications can be more simply achieved by combining them into one indication which includes many of the terms recommended by the comment.

The agency further believes that the terms "cleansing," "washing," and "bathing" may be used to convey the same message as "flushing" or "irrigating," but that the terms "flooding" and "immersing" are not as clear and are not meaningful when used in conjunction with the eye. For example, to immerse an eye could be misinterpreted as meaning to completely submerge it, and flooding is not normally associated with a cleansing action or the removal of irritants accomplished by using an OTC eyewash drug product.

In conclusion, the agency is revising § 349.78(b) in this final monograph by including a second indication that reads as follows:

"For" (select one of the following: "flushing," "irrigating," "cleansing," "washing," or "bathing") "the eye to help relieve" (select one or more of the following: "irritation," "discomfort," "burning," "stinging," "smarting," or "itching") "by removing" (select one or more of the following: "loose foreign material," "air pollutants (smog or pollen)," or "chlorinated water").

19. Noting that the tentative final monograph for OTC ophthalmic drug products did not provide a section for "Other Allowable Statements," one comment requested that such a section be included in the final monograph for OTC ophthalmic drug products. The comment cited the tentative final monograph for OTC oral mucosal injury drug products (48 FR 33984) as providing two other allowable statements for oral wound cleansers: "assists in the removal of foreign material from minor oral wounds" and "physically removes debris from minor oral wounds" and stated that, since an eyewash functions in a similar manner, the following "Other Allowable Statements" would be appropriate and should be included in the monograph:

(1) "Assists in the removal of foreign material from the eye";

(2) "Physically removes debris (foreign material) from the eye"; and

(3) "Bathes the eye, removing debris."

Under the current policy regarding the exclusivity of labeling terms, the agency will not include a section entitled "Other Allowable Statements" in final monographs for OTC drug products. (See the **Federal Register** of May 1, 1986 (51 FR 16258).)

20. Two comments urged elimination of the proposed warning for eyewashes in § 349.78(c)(2), which reads, "Not for use in open wounds in or near the eyes. Consult a doctor." (See 48 FR 29799.) Acknowledging that open wounds in or near the eye can be very serious and that professional medical attention should be sought as soon as possible, one comment nevertheless maintained that flushing a wound with a sterile liquid to remove debris and avoid infection is an appropriate action in an emergency situation where medical attention is not immediately available. Stating that it did not object to the portion of the warning requiring a physician's care, the comment proposed the following warning: "Obtain immediate medical treatment for all open wounds in or near the eyes," and concluded that such a warning would not preclude flushing a wound with a sterile eyewash.

The second comment contended that the warning in § 349.78(c)(1) which reads, "If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists, consult a doctor," adequately directs consumers to see a physician when appropriate. The comment concluded that eyewashes should not be singled out to carry the warning in § 349.78(c)(2), especially when washing a wound in or near the eyes with an eyewash is beneficial until the consumer can see a physician.

The agency agrees with the comments that washing an open wound in or near the eyes with an OTC eyewash should not be specifically prohibited in the labeling of that drug product. However, the seriousness of open wounds in or near the eyes should be emphasized in the labeling of OTC eyewash drug products. Consumers also should be urged to seek professional treatment as soon as possible. Such warnings are appropriate on OTC eyewash products because a consumer will more likely use an OTC eyewash, if available, to clean such a wound than any of the other classes of OTC ophthalmic drug products. The agency does not believe that the general warning in § 349.78(c)(1) is adequate to encourage consumers to seek professional treatment for an open wound in or near the eyes. Therefore, a separate warning is needed for OTC eyewashes.

The agency concludes that the alternate warning suggested by one of the comments is sufficient to alert the consumer to seek professional treatment for open wounds in or near the eyes and that a warning prohibiting use of an eyewash for such cleansing purposes is not required. Therefore, the agency is not including the warning proposed in § 349.78(c)(2) of the tentative final monograph but is replacing it with the following warning: "Obtain immediate medical treatment for all open wounds in or near the eyes."

D. Comments on Testing Guidelines for OTC Ophthalmic Drug Products

21. Two comments disagreed with the agency's position on the Draize rabbit eye irritation test for evaluating the safety of ophthalmic drug products, as set forth in the notice of proposed rulemaking at 48 FR 29795. One comment contended that the Draize test only identifies grossly irritating substances, may be inaccurate because of the differences between rabbit and human eyes, and functions solely in a pass/fail capacity for nearly all compounds. According to a comment, in vitro methods and refined animal techniques offer the possibility of assaying parameters more relevant to eye irritation while causing less pain to animals. The comment advocated two approaches: (1) The refinement of current procedures for the short term, and (2) the eventual replacement of rabbits with a suitable alternative. The short-term refinements suggested by the comment were from the Inter-agency Regulatory Liaison Group publication "Recommended Guidelines for Acute Eye Irritation Testing," which states that:

1. Known corrosive substances should be assumed to be irritants and not be tested.

2. Dermal irritancy tests should precede eye tests. Severe dermal responses need not be subjected to eye irritancy tests.

3. The number of rabbits used in Draize tests should be substantially reduced.

The comment argued that, as a minimum requirement, FDA should adopt and clearly state the short-term refinements listed above in order to minimize the number of animals exposed to irritants. The comment submitted a review of some methods which show potential for replacing rabbit eyes as testing vehicles and included a description of an alternative to the Draize test which utilizes the chorioallantoic membrane of the chick embryo to assay irritation. The comment urged that the agency acknowledge that alternatives which are at least equivalent to the Draize test are available.

The other comment argued that the agency failed to specify the circumstances in which in vitro data on eye irritation would be accepted and stated that "the FDA Notice of Proposed Rulemaking discourages the notion that current efforts to develop alternatives will ever lead to new testing acceptable to your agency." The comment suggested that "whole eye" testing need not be confined to the Draize test and that cell and tissue culture methods will ultimately provide data which will overcome the difficulties of interspecies transposition and provide testing which is adequately protective as well as more elegant and more humane. This comment recommended that the agency establish study groups and research communication centers to encourage research on in vitro alternatives to the Draize test. The comment requested an oral hearing on these objections and comments.

The agency recognizes the limitations of the Draize test and has discussed these limitations in the notice of proposed rulemaking for OTC ophthalmic drug products (48 FR 29795); however, this test is, at present, the most reliable method for determining the potential harmfulness, or safety, of a product instilled in the eye. The agency is actively considering alternatives to the rabbit eye irritation test and to other animal protocols and is aware of the methods mentioned in the comments. Among the assays which show promise of replacing the Draize rabbit eye irritation test are cell culture methods using corneal epithelial, stromal, and endothelial cell lines. In addition, in vitro cell culture research using a protozoan species as a model for identifying potential ocular irritants and a tissue culture method utilizing excised cornea from animal or eyebank eyes are being investigated (Ref. 1). Four toxicology laboratories are involved in testing a battery of sensitive in vitro assays reported to be useful in ranking chemicals as mild to severe irritants in the rabbit eye. The assay, described by one comment, which utilizes the chorioallantoic membrane of the chick embryo offers a test system which more closely resembles the complexities of an in vivo assay. Because it is a living tissue, the membrane is rich in blood vessels and responds accordingly to chemical irritants. The developer of this method is looking for collaborators in other laboratories to validate his assay (Ref. 2). However, these assays need further development and have not yet been developed to the point where they can replace the Draize test. The investigators pursuing these alternatives are working on establishing parameters for toxicity assessment so that the most irritating chemicals will be screened by these tests without the need of having them instilled into a rabbit eye. Complete validation of an assay requires that it be tested on a wide spectrum of compounds, in many different laboratories. In vitro findings must be related to in vivo data and the results must indicate that the assay is predictable, reliable, and reproducible (Ref. 2). None of these methods has, as yet, been accepted as a replacement for the Draize rabbit eye irritation test; however, the agency encourages the utilization of in vitro testing to prescreen obviously irritating chemicals and minimize the number of animals used in testing.

The agency's primary mission is consumer protection. In carrying out this mission, the agency must recommend testing procedures which have been demonstrated to be universally recognized as valid for detecting any ocular irritancy of an ophthalmic drug product prior to human use. The agency regrets the necessity of animals being used for toxicological testing and has taken steps to promote humane treatment of these animals as well as to minimize the number of animals used for testing and research. In the **Federal Register** of January 22, 1981, the agency committed itself to use the Inter-agency Regulatory Liaison Group guidelines for acute eye irritation testing. (See 46 FR 7077.) In November 1983, FDA sponsored a public workshop on acute toxicity studies, inviting representatives

from FDA, other government agencies, and industry. A report of the workshop was issued in February 1984 (Ref. 3).

At that workshop, the agency announced its intention to form a committee to review the care and handling of animals used in testing. As a result of the workshop, the Steering Committee on Animal Welfare Issues was formed in January 1984 and was charged with addressing a number of specific issues, such as:

1. Are mechanisms in place to ensure continuing compliance with the Animal Welfare Act and with the highest standards of animal care?

2. Are FDA procedures so ordered as to obtain the maximum amount of useful scientific information while utilizing the fewest number of animals?

3. Is FDA making the maximum use of and encouraging the continued development of reliable in vitro alternatives to in vivo methodologies?

All of the agency Centers and the Office of the Commissioner were represented on the Steering Committee, which presented a final report on animal welfare issues to the Commissioner on August 15, 1984 (Ref. 1). The report indicated that all of the Centers in the agency have practices and procedures for assuring humane care and treatment of animals. In particular, two facilities are accredited by the American Association for Accreditation of Laboratory Animal Care, the highest formal accreditation, and the others have self-assessment procedures that meet or exceed Public Health Service standards. The report also lists many instances where in vitro testing has eliminated the need for animal testing in agency guidelines for industry toxicity studies. Based on the Committee's recommendation, the Commissioner established an agency-wide Animal Research Council to function as a resource to the various Centers and the Commissioner, and as a means of communication and coordination for the agency.

As discussed above, the agency is addressing the concerns for which the comment requested an oral hearing. Therefore, the Commissioner concludes that a hearing on this issue is not warranted.

References

(1) Agency Steering Committee On Animal Welfare Issues, Food and Drug Administration, "Final Report to the Commissioner," August 15, 1984, Docket No. 84N-0299, Dockets Management Branch.

(2) Dagani, R., "In Vitro Methods May Offer Alternatives to Animal Testing," *Chemical and Engineering News*, p. 28, November 12, 1984.

(3) Office of Science Coordination, Food and Drug Administration, "Final Report on Acute Studies Workshop," February 23, 1984, OTC Volume 100FM, Docket No. 80N-0145, Dockets Management Branch.

II. Summary of Significant Changes

1. The agency is clarifying the definition of an OTC ophthalmic drug product in § 349.3(a) to reflect that some products are applied to the eyelid rather than instilled in the eye.

2. The agency is not including the words "contain no pharmacologically active ingredients" in proposed § 349.20 in this final monograph and is revising the description for eyewashes to read: "These products contain water, tonicity agents to establish isotonicity with tears, agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent." The agency is also not including the words "containing no pharmacologically active ingredients" in the definition for eyewash, eye lotion, and irrigating solution in § 349.3(f). (See comment 2 above.)

3. To eliminate duplicate words for any product with more than one indication, the agency has added the following in § 349.50(b): "Indications applicable to each active ingredient of the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable." (See comment 14 above.) Accordingly, proposed § 349.50(b) has been redesignated § 349.50(c) in this final monograph.

4. The agency is shortening and modifying the warning proposed in § 349.50(b)(1) of the tentative final monograph (redesignated as § 349.50(c)(1)) to apply to ophthalmic drug products packaged in multi-use containers. The warning now reads: "To avoid contamination, do not touch tip of container to any surface. Replace cap after using." The agency is also including a new warning in § 349.50(c)(2), which applies to ophthalmic drug products packaged in single-use containers, as follows: "To avoid contamination, do not touch tip of container to any surface. Do not reuse. Once opened, discard." (See comments 7 and 8 above.) Accordingly, the warning proposed in § 349.50(b)(2) of the tentative final monograph has been redesignated § 349.50(c)(3).

5. Section 502(e)(i) of the act (21 U.S.C. 352(e)(1)) provides that the label must bear the established name and quantity or proportion of mercury or any derivative or preparation of such substance whether active or inactive. In order that all requirements for OTC ophthalmic drug products containing mercury can be found in one location, the agency is incorporating this statutory requirement for labeling the quantity of the mercury-containing ingredient into § 349.50(c)(3).

6. Because submitted market research studies do not establish that consumers equate the term "tired eyes" with symptoms of minor irritation and redness in the eyes, the agency is not including "tired eyes" as an indication for any of the ophthalmic drug classes in this final monograph. However, the agency concludes that the term "relief of tired eyes" is acceptable additional information that may appear elsewhere in the labeling, separate from monograph approved statements, of any OTC ophthalmic drug product except OTC ophthalmic vasoconstrictors. (See comment 10 above.)

7. The agency is providing manufacturers the option of selecting the term "eye" or "ophthalmic" as well as a term describing the dosage form of the product in the statement of identity for ophthalmic astringent drug products in § 349.55(a), ophthalmic demulcent drug products in § 349.60(a), ophthalmic emollient drug products in § 349.65(a), ophthalmic hypertonicity drug products in § 349.70(a), and ophthalmic vasoconstrictor drug products in § 349.75(a). (See comment 12 above.)

8. The agency is clarifying § 349.14 by adding concentration limits for each of the approved ophthalmic emollient active ingredients. The concentrations are based on information from several sources. The Panel stated that lanolin materials by themselves are not suitable for direct application to tissues and are usually incorporated at a concentration of 1 to 10 percent in oleaginous ointment bases (45 FR 30045). The concentration of mineral oil was included in a submission to the Panel (Ref. 1) and in the Physicians' Desk Reference for Ophthalmology (Ref. 2). The agency is applying the same concentration for light mineral oil as an emollient because of its similarity to mineral oil. The concentration of white wax was reported in the Panel's discussion (45 FR 30045) and in Remington's Pharmaceutical Sciences (Ref. 3). The Panel considered both white wax and paraffin as agents for increasing the consistency of ointment products and not for use alone as emollients (45 FR 30046). The agency agrees and is also applying the same principles for yellow wax because of its similarity to white wax. The Panel stated that white petrolatum and white ointment can be used alone as ocular emollients (45 FR 30045) and the Physicians' Desk Reference for Ophthalmology identifies

two presently marketed emollient products consisting of 100 percent white petrolatum (Refs. 4 and 5).

In order to address any product that was not reviewed by the Panel and that contains concentrations of emollients other than those included in the monograph, the agency requests manufacturers to submit the formulations in a petition to amend the monograph before the effective date of the final monograph. The agency will consider amending the monograph accordingly.

References

(1) OTC Volume 100041.

(2) "Physicians' Desk Reference for Ophthalmology," 15th Ed., Medical Economics Company, Oradell, NJ, p. 97, 1987.

(3) "Remington's Pharmaceutical Sciences," 17th Ed., edited by A.R. Gennaro, et al., Mack Publishing Co., Easton, PA, pp. 1302–1303, 1985.

(4) "Physicians' Desk Reference for Ophthalmology," 13th Ed., Medical Economics Company, Oradell, NJ, p. 108, 1985.

(5) "Physician's Desk Reference for Ophthalmology," 15th Ed., Medical Economics Company, Oradell, NJ, p. 148, 1987.

9. The agency has determined that the term "nonionic lanolin derivatives" is not descriptive enough to be included in an OTC drug final monograph. Although this term was proposed in the tentative final monograph, the agency subsequently contacted the manufacturer of a product containing nonionic lanolin derivatives several times requesting information on the chemical nature and composition of this ingredient so that it could be properly defined and characterized (Ref. 1). For an ingredient or mixture to be included in an OTC drug final monograph, it is necessary to have publicly available chemical information that can be used by other manufacturers to identify the ingredient should they desire to use it in their products. Because the agency has not received any detailed chemical description of nonionic lanolin derivatives, § 349.14(a)(3), which referred to nonionic lanolin derivatives in the tentative final monograph, is not being included in this final monograph.

Reference

(1) Memoranda of Telephone Conversations between J. Cobb, FDA, and P. Nowacki, Allergan Pharmaceuticals, dated March 28, 1985; July 24, 1985; July 31, 1985; August 30, 1985; and May 7, 1986 in OTC Volume 100FM, Docket No. 80N–0145, Dockets Management Branch.

10. The agency is shortening the indication for ophthalmic vasoconstrictors proposed in § 349.75(b) to read "Relieves redness of the eye due to minor eye irritations." (See comment 14 above.)

11. The agency is not including the proposed phrase "contains the established name of all components identified in § 349.20" in the statement of identity for eyewashes in § 349.78(a). The agency has determined that the description of the principal intended action, i.e., "eyewash," "eye lotion," or "eye irrigating solution" satisfies the statement of identity requirements for eyewashes. (See comment 13 above.)

12. In order to permit alternate terms to describe the cleansing function of an eyewash, the agency is expanding the indications for eyewashes proposed in § 349.78(b). (See comment 18 above.)

13. The agency is replacing the warning proposed in § 349.78(c)(2) ("Not for use in open wounds in or near the eyes. Consult a doctor.") with the following warning: "Obtain immediate medical treatment for all open wounds in or near the eyes." (See comment 20 above.)

14. The agency is including a section on the labeling of ophthalmic combination drug products in § 349.79.

III. The Agency's Final Conclusions on OTC Ophthalmic Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC ophthalmic drug products are generally recognized as safe and effective and not misbranded. The agency has determined the following ingredients to be a monograph condition for their respective ophthalmic drug class:

Ophthalmic drug class	Ingredient
Astringent	Zinc sulfate (0.25%)
Demulcent	Carboxymethylcellulose sodium (0.2 to 2.5%)
	Dextran 70 (0.1% when used with another polymeric demulcent agent included in the monograph)
	Gelatin (0.01%)
	Glycerin (0.2 to 1%)
	Hydroxyethyl cellulose (0.2 to 2.5%)
	Hydroxypropyl methylcellulose (0.2 to 2.5%)
	Methylcellulose (0.2 to 2.5%)
	Polyethylene glycol 300 (0.2 to 1%)
	Polyethylene glycol 400 (0.2 to 1%)
	Polysorbate 80 (0.2 to 1%)
	Polyvinyl alcohol (0.1 to 4%)
	Povidone (0.1 to 2%)
	Propylene glycol (0.2 to 1%)
Emollient	Anhydrous lanolin (1 to 10 percent in combination with one or more oleaginous emollient agents included in the monograph)
	Lanolin (1 to 10 percent in combination with one or more oleaginous emollient agents included in the monograph)
	Light mineral oil (up to 50 percent in combination with one or more other emollient agents included in the monograph)
	Mineral oil (up to 50 percent in combination with one or more other emollient agents included in the monograph)
	Paraffin (up to 5 percent in combination with one or more other emollient agents included in the monograph)
	Petrolatum (up to 100 percent)
	White ointment (up to 100 percent)
	White petrolatum (up to 100 percent)
	White wax (up to 5 percent in combination with one or more other emollient agents included in the monograph)
	Yellow wax (up to 5 percent in combination with one or more other emollient agents included in the monograph)
Eyewash	Water, tonicity agent(s), pH and buffering agent(s), and a preservative
Hypertonicity agent	Sodium chloride (2 to 5%)
Vasoconstrictor	Ephedrine hydrochloride (0.123%)
	Naphazoline hydrochloride (0.01 to 0.03%)
	Phenylephrine hydrochloride (0.08 to 0.2%)
	Tetrahydrozoline hydrochloride (0.01 to 0.05%)

With the exception of ophthalmic antiinfective drug products, all other ingredients are considered nonmonograph ingredients and any drug product marketed for use as an OTC ophthalmic drug product that is not in conformance with the monograph (21 CFR Part 349) may be considered a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352) and may not be marketed for this use unless it is the subject of an approved NDA.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules

resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC ophthalmic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC ophthalmic drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency is withdrawing a portion of § 369.20 under the entry "OPHTHALMIC PREPARATIONS" because aspects of this entry are superseded by the requirements of the final monograph for OTC ophthalmic drug products (Part 349).

List of Subjects

21 CFR Part 349

Labeling, Over-the-counter drugs, Ophthalmic drug products.

21 CFR Part 369

OTC drugs, Warning and caution statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. By adding a new Part 349 consisting of §§ 349.1–349.80, to read as follows:

PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.

349.1 Scope.
349.3 Definitions.

Subpart B—Active Ingredients

349.10 Ophthalmic astringent.
349.12 Ophthalmic demulcents.
349.14 Ophthalmic emollients.
349.16 Ophthalmic hypertonicity agent.
349.18 Ophthalmic vasoconstrictors.
349.20 Eyewashes.
349.30 Permitted combinations of active ingredients.

Subpart C—Labeling

349.50 Labeling of ophthalmic drug products.
349.55 Labeling of ophthalmic astringent drug products.
349.60 Labeling of ophthalmic demulcent drug products.
349.65 Labeling of ophthalmic emollient drug products.
349.70 Labeling of ophthalmic hypertonicity drug products.
349.75 Labeling of ophthalmic vasoconstrictor drug products.
349.78 Labeling of eyewash drug products.
349.79 Labeling of permitted combinations of active ingredients.
349.80 Professional labeling.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart A—General Provisions

§ 349.1 Scope.

(a) An over-the-counter ophthalmic drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part and each of the general conditions established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 349.3 Definitions.

As used in this part:

(a) *Ophthalmic drug product.* A drug product, which should be sterile in accordance with § 200.50, to be applied to the eyelid or instilled in the eye.

(b) *Astringent.* A locally acting pharmacologic agent which, by precipitating protein, helps to clear mucus from the outer surface of the eye.

(c) *Buffering agent.* A substance which stabilizes the pH of solutions against changes produced by introduction of acids or bases from such sources as drugs, body fluids, tears, etc.

(d) *Demulcent.* An agent, usually a water-soluble polymer, which is applied topically to the eye to protect and lubricate mucous membrane surfaces and relieve dryness and irritation.

(e) *Emollient.* An agent, usually a fat or oil, which is applied locally to eyelids to protect or soften tissues and to prevent drying and cracking.

(f) *Eyewash, eye lotion, irrigating solution.* A sterile aqueous solution intended for washing, bathing, or flushing the eye.

(g) *Hypertonicity agent.* An agent which exerts an osmotic gradient greater than that present in body tissues and fluids, so that water is drawn from the body tissues and fluids across semipermeable membranes. Applied topically to the eye, a hypertonicity agent creates an osmotic gradient which draws water out of the cornea.

(h) *Isotonicity.* A state or quality in which the osmotic pressure in two fluids is equal.

(i) *Vasoconstrictor.* A pharmacologic agent which, when applied topically to the mucous membranes of the eye, causes transient constriction of conjunctival blood vessels.

Subpart B—Active Ingredients

§ 349.10 Ophthalmic astringent.

The active ingredient and its concentration in the product is as follows: Zinc sulfate, 0.25 percent.

§ 349.12 Ophthalmic demulcents.

The active ingredients of the product consist of any of the following, within the established concentrations for each ingredient:

(a) Cellulose derivatives:

(1) Carboxymethylcellulose sodium, 0.2 to 2.5 percent.

(2) Hydroxyethyl cellulose, 0.2 to 2.5 percent.

(3) Hydroxypropyl methylcellulose, 0.2 to 2.5 percent.

(4) Methylcellulose, 0.2 to 2.5 percent.

(b) Dextran 70, 0.1 percent when used with another polymeric demulcent agent in this section.

(c) Gelatin, 0.01 percent.

(d) Polyols, liquid:

(1) Glycerin, 0.2 to 1 percent.

(2) Polyethylene glycol 300, 0.2 to 1 percent.

(3) Polyethylene glycol 400, 0.2 to 1 percent.

(4) Polysorbate 80, 0.2 to 1 percent.

(5) Propylene glycol, 0.2 to 1 percent.

(e) Polyvinyl alcohol, 0.1 to 4 percent.

(f) Povidone, 0.1 to 2 percent.

§ 349.14 Ophthalmic emollients.

The active ingredients of the product consist of any of the following:

(a) Lanolin preparations:

(1) Anhydrous lanolin, 1 to 10 percent in combination with one or more oleaginous emollient agents included in the monograph.

(2) Lanolin, 1 to 10 percent in combination with one or more oleaginous emollient agents included in the monograph.

(b) Oleaginous ingredients:

(1) Light mineral oil, up to 50 percent in combination with one or more other emollient agents included in the monograph.

(2) Mineral oil, up to 50 percent in combination with one or more other emollient agents included in the monograph.

(3) Paraffin, up to 5 percent in combination with one or more other emollient agents included in the monograph.

(4) Petrolatum, up to 100 percent.

(5) White ointment, up to 100 percent.

(6) White petrolatum, up to 100 percent.

(7) White wax, up to 5 percent in combination with one or more other emollient agents included in the monograph.

(8) Yellow wax, up to 5 percent in combination with one or more other emollient agents included in the monograph.

§ 349.16 Ophthalmic hypertonicity agent.

The active ingredient and its concentration in the product is as follows: Sodium chloride, 2 to 5 percent.

§ 349.18 Ophthalmic vasoconstrictors.

The active ingredient of the product consists of one of the following, within the established concentration for each ingredient:

(a) Ephedrine hydrochloride, 0.123 percent.

(b) Naphazoline hydrochloride, 0.01 to 0.03 percent.

(c) Phenylephrine hydrochloride, 0.08 to 0.2 percent.

(d) Tetrahydrozoline hydrochloride, 0.01 to 0.05 percent.

§ 349.20 Eyewashes.

These products contain water, tonicity agents to establish isotonicity with tears, agents for establishing pH and buffering to achieve the same pH as tears, and a suitable preservative agent.

§ 349.30 Permitted combinations of active ingredients.

The following combinations are permitted provided each active ingredient is present within the established concentration, and the product is labeled in accordance with § 349.79.

(a) Any single ophthalmic astringent active ingredient identified in § 349.10 may be combined with any single ophthalmic vasoconstrictor active ingredient identified in § 349.18.

(b) Any two or three ophthalmic demulcent active ingredients identified in § 349.12 may be combined.

(c) Any single ophthalmic demulcent active ingredient identified in § 349.12 or any ophthalmic demulcent combination identified in paragraph (b) of this section may be combined with any single ophthalmic vasoconstrictor identified in § 349.18.

(d) Any single ophthalmic astringent active ingredient identified in § 349.10 may be combined with any single ophthalmic vasoconstrictor active ingredient identified in § 349.18 and any single ophthalmic demulcent identified in § 349.12 or ophthalmic demulcent combination identified in paragraph (b) of this section.

(e) Any two or more emollient active ingredients identified in § 349.14 may be combined as necessary to give the product proper consistency for application to the eye.

Subpart C—Labeling

§ 349.50 Labeling of ophthalmic drug products.

(a) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this part.

(b) Where applicable, indications in this part applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this part, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) The labeling of the product contains the following warnings, under the heading "Warnings":

(1) *For ophthalmic drug products packaged in multi-use containers.* "To avoid contamination, do not touch tip of container to any surface. Replace cap after using."

(2) *For ophthalmic drug products packaged in single-use containers.* "To avoid contamination, do not touch tip of container to any surface. Do not reuse. Once opened, discard."

(3) *For ophthalmic drug products containing mercury compounds used as a preservative.* "This product contains (name and quantity of mercury-containing ingredient) as a preservative. Do not use this product if you are sensitive to" (select one of the following: "mercury" or "(insert name of mercury-containing ingredient) or any other ingredient containing mercury)."

§ 349.55 Labeling of ophthalmic astringent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "astringent" (select one of the following: "eye" or "ophthalmic") "(insert dosage form, e.g., drops)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following phrase: "For the temporary relief of discomfort from minor eye irritations."

(c) *Warnings.* In addition to the warnings in § 349.50, the labeling of the product contains the following warnings under the heading "Warnings" for products containing any ingredient identified in § 349.10:

(1) "If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists for more than 72 hours, discontinue use and consult a doctor."

(2) "If solution changes color or becomes cloudy, do not use."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": Instill 1 to 2 drops in the affected eye(s) up to four times daily.

§ 349.60 Labeling of ophthalmic demulcent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug(s), if any, and identifies the product as a "lubricant" or "demulcent (lubricant)" (select one of the following: "eye" or "ophthalmic") "(insert dosage form, e.g., drops)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," one or more of the following phrases:

(1) "For the temporary relief of burning and irritation due to dryness of the eye."

(2) "For the temporary relief of discomfort due to minor irritations of the eye or to exposure to wind or sun."

(3) "For use as a protectant against further irritation or to relieve dryness of the eye."

(4) "For use as a lubricant to prevent further irritation or to relieve dryness of the eye."

(c) *Warnings.* In addition to the warnings in § 349.50, the labeling of the product contains the following warnings under the heading "Warnings" for products containing any ingredient identified in § 349.12:

(1) "If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists for more than 72 hours, discontinue use and consult a doctor."

(2) "If solution changes color or becomes cloudy, do not use."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": Instill 1 or 2 drops in the affected eye(s) as needed.

§ 349.65 Labeling of ophthalmic emollient drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug(s), if any, and identifies the product as a "lubricant" or "emollient (lubricant)" (select one of the following: "eye" or "ophthalmic") "(insert dosage form, e.g., ointment)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," one or more of the following phrases:

(1) "For the temporary relief of burning and irritation due to dryness of the eye."

(2) "For the temporary relief of discomfort due to minor irritations of the eye or to exposure to wind or sun."

(3) "For use as a protectant against further irritation or to relieve dryness of the eye."

(4) "For use as a lubricant to prevent further irritation or to relieve dryness of the eye."

(c) *Warnings.* In addition to the warnings in § 349.50, the labeling of the product contains the following warnings under the heading "Warnings" for products containing any ingredient identified in § 349.14: "If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists for more than 72 hours, discontinue use and consult a doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": Pull down the lower lid of the affected eye and apply a small amount (one-fourth inch) of ointment to the inside of the eyelid.

§ 349.70 Labeling of ophthalmic hypertonicity drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "hypertonicity" (select one of the following: "eye" or "ophthalmic") "(insert dosage form, e.g., drops)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following phrase: "For the temporary relief of corneal edema."

(c) *Warnings.* In addition to the warnings in § 349.50, the labeling of the product contains the following warnings under the heading "Warnings" for products containing any ingredient identified in § 349.16:

(1) "Do not use this product except under the advice and supervision of a doctor. If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists, consult a doctor."

(2) "This product may cause temporary burning and irritation on being instilled into the eye."

(3) "If solution changes color or becomes cloudy, do not use."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": Instill 1 or 2 drops in the affected eye(s) every 3 or 4 hours, or as directed by a doctor.

§ 349.75 Labeling of ophthalmic vasoconstrictor drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug(s), if any, and identifies the product as a "redness reliever" or "vasoconstrictor (redness reliever)" (select one of the following: "eye" or "ophthalmic") "(insert dosage form, e.g., drops)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following phrase: "Relieves redness of the eye due to minor eye irritations."

(c) *Warnings.* In addition to the warnings in § 349.50, the labeling of the product contains the following warnings under the heading "Warnings" for products containing any ingredient identified in § 349.18:

(1) "If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists for more than 72 hours, discontinue use and consult a doctor."

(2) "If you have glaucoma, do not use this product except under the advice and supervision of a doctor."

(3) "Overuse of this product may produce increased redness of the eye."

(4) "If solution changes color or becomes cloudy, do not use."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions": Instill 1 to 2 drops in the affected eye(s) up to four times daily.

§ 349.78 Labeling of eyewash drug products.

(a) *Statement of identity.* The labeling of the product identifies the product with one or more of the following terms: "eyewash," "eye lotion," or "eye irrigating solution."

(b) *Indications.* The labeling of the product states, under the heading "Indications," one of the following phrases:

(1) "For" (select one of the following: "flushing," "irrigating," "cleansing," "washing," or "bathing") "the eye to remove" (select one or more of the following: "loose foreign material," "air pollutants (smog or pollen)," or "chlorinated water").

(2) "For" (select one of the following: "flushing," "irrigating," "cleansing," "washing," or "bathing") "the eye to help relieve" (select one or more of the following: "irritation," "discomfort," "burning," "stinging," "smarting," or "itching") "by removing" (select one or more of the following: "loose foreign material," "air pollutants (smog or pollen)," or "chlorinated water").

(c) *Warnings.* In addition to the warnings in § 349.50, the labeling of the product contains the following warnings under the heading "Warnings" for all eyewash products:

(1) "If you experience eye pain, changes in vision, continued redness or irritation of the eye, or if the condition worsens or persists, consult a doctor."

(2) "Obtain immediate medical treatment for all open wounds in or near the eyes."

(3) "If solution changes color or becomes cloudy, do not use."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For eyewash products intended for use with an eyecup.* Rinse cup with clean water immediately before each use. Avoid contamination of rim and inside surfaces of cup. Fill cup half full and apply the cup to the affected eye, pressing tightly to prevent the escape of the liquid, and tilt the head backward. Open eyelids wide and rotate eyeball to ensure thorough bathing with the wash or lotion. Rinse cup with clean water after each use.

(2) *For eyewash products intended for use with a nozzle applicator.* Flush the affected eye as needed, controlling the rate of flow of solution by pressure on the bottle.

§ 349.79 Labeling of permitted combinations of active ingredients.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each

ingredient in the combination, as established in the statement of identity sections of this part. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of this part.

(b) *Indications.* The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as established in the indications sections of this part.

(c) *Warnings.* The labeling of the product states, under the heading "Warnings," the warning(s) for each ingredient in the combination, as established in the warnings sections of this part.

(d) *Directions.* The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of this part. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in the applicable OTC drug monograph.

§ 349.80 Professional labeling.

The labeling of any OTC ophthalmic demulcent drug product provided to health professionals (but not to the general public) may contain instructions for the use of these products in professional eye examinations (i.e. gonioscopy, electroretinography).

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

2. The authority citation for 21 CFR Part 369 continues to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

§ 369.20 [Amended]

3. In Subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended under the entry for "OPHTHALMIC PREPARATIONS," to read as follows:

* * * * *

OPHTHALMIC PREPARATIONS. (See also § 200.50 of this chapter.)

Boric acid offered for use in the preparation of ophthalmic solutions should bear the statement: Prepare solution by boiling in water. Store in a sterile container. Prepare sufficient for one day's use and discard unused portion.

* * * * *

Dated: November 16, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88–4585 Filed 3–3–88; 8:45 am]

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Federal Register

Friday
March 4, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; Notice No. 88-3]

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend the regulations governing the operation of aircraft in the airspace above the Grand Canyon up to an altitude of 14,500 feet above mean sea level (MSL). The proposed rule would substantially implement recommendations by the National Park Service of the Department of the Interior, which operates the Park. The proposed rule would: (1) Establish a Special Flight Rules Area from the surface to but not including 14,500 feet MSL in the area of the Grand Canyon; (2) prohibit flights below a certain altitude in each of four sectors of this area, with certain exceptions; (3) establish flight-free zones from the surface to 14,500 feet MSL above large areas of the Park; (4) provide routes for commercial tour operators and transient operators through the canyon area; and (5) retain certain existing terrain avoidance and communications requirements for flights in the area.

DATES: *Comment dates:* Comments must be received on the proposed rule on or before March 25, 1988.

Hearing date: Two public hearings will be held:

Phoenix, AZ: 7:00 p.m. on March 2, 1988.
Las Vegas, NV: 7:00 p.m. on March 3, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25149, 800 Independence Avenue, SW., Washington, DC 20591

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

The public hearings will be held at the following locations:

Arizona Air National Guard Theater, Hess Street, Phoenix, Arizona

Commissioner's Conference Room, 5th Floor, Main Terminal Building, McCarran International Airport, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: David L. Bennet, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire on any portion of the amendment. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. *25149.*" The postcard will be date/time stamped and returned to the commenter. The proposals 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.

In addition to seeking comments on this amendment, the FAA will hold public hearings to allow additional public input. The hearings will be held on March 2, in Phoenix, Arizona, and on March 3, at McCarran International Airport, Las Vegas, Nevada.

Availability of Document

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3471. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

Persons wishing to make a presentation at the meeting may contact Ronald Debelak at (213) 297-1658.

Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation. Questions may be asked of each presenter by other participants or by representatives of the Administrator.

(b) The hearing will begin at 7:00 p.m. (local time). There will be no admission fee or other charge to attend and participate. All sessions will be open to all persons on a space available basis. The presiding officer may accelerate the meeting if it is more expeditious than planned.

(c) All meeting sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be distributed. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the hearing should not be taken as expressing a final FAA position.

Public Hearing Schedule

The schedule for the meeting is as follows:

Wednesday, March 2: Arizona Air National Guard Theater, Hess Street, Phoenix, Arizona

Thursday, March 3: Commissioners' Conference Room, 5th Floor, Main Terminal Building, McCarran International Airport, Las Vegas, Nevada

Agenda

7:00 to 7:15—Presentation of meeting procedures.
7:15 to 8:00—FAA presentation of proposal.
8:15 to finish—Public presentations and discussion.

Background

The FAA has broad authority under the Federal Aviation Act (FAAct) of 1958, as amended, to regulate and control the use of navigable airspace of the United States. Under section 307(a) of the FAAct (49 U.S.C. 1348(a)), the agency is authorized to develop plans for and to formulate policy with respect

to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. Under section 307(c) of the FAAct (49 U.S.C. 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace for purposes including the protection of persons and property on the surface, which the agency has interpreted to include protection from the environmental impacts of aircraft overflight.

The Grand Canyon, in Arizona, is a unique area of natural beauty which attracts nearly 3 million visitors each year. The canyon is approximately 275 miles in length and up to 22 miles in width between the north and south rims. A large portion of the canyon has been set aside as a National Park operated by the National Park Service (NPS) of the Department of the Interior. Other areas in and around the canyon include Indian reservations which are provided certain protections under Federal law.

Airspace above the surface of the Grand Canyon National Park (GCNP) is within the exclusive regulatory authority of the FAA. The park itself is operated by the NPS in accordance with specific Federal statutes.

Aircraft flights over the Grand Canyon have been an issue of increasing public interest during the past several years, for both operational and environmental reasons. Prior to April 27, 1987, there were no special regulations for aircraft flight in and above the canyon. While the safety record for operations in the vicinity of the canyon is generally good, there have been aircraft accidents, notably a collision between two tour operator aircraft in June 1986 with a loss of 25 lives. The noise generated on the surface has also been the subject of public debate. There is little technical evidence as to the actual noise levels in the canyon caused by aircraft. However, comments received by the National park Service (NPS) and the FAA, at least prior to promulgation of the current FAA regulations, indicate that there has been substantial public opinion to the effect that the level of aircraft noise should be reduced.

Special Federal Aviation Regulation 50–1

In response to both operational and environmental concerns, the FAA established regulations for the flight of aircraft in the vicinity of the canyon from the surface to 9,000 feet MSL, effective April 27, 1987 (52 FR 9768, March 26, 1987; 52 FR 22734, June 15, 1987). Those regulations are currently in effect. The FAA believes that SFAR 50–1 resolved all safety issues with operation near the Grand Canyon and provided a continuing mechanism for resolution of future operational problems. SFAR 50–1 also substantially reduced noise impact from low altitude flight in the Grand Canyon by limiting flights to approximately rim level or higher and routing aircraft away from noise-sensitive areas of the canyon.

SFAR 50–1 specifically does the following:

1. Establishes a Grand Canyon National Park Special Flight Rules Area from the surface to 9,000 feet MSL. The area is marked on aeronautical charts and described in other pilot information publications.

2. Prohibits operation by any aircraft in the defined area unless (a) the operator complies with specific route and altitude procedures for transient aircraft; (b) the operator is authorized in writing by the FAA Las Vegas Flight Standards District Office to operate in the airspace, (c) the operator holds a Part 135 certificate and has express authorization in its Part 135 operations specifications to operate in the airspace, (d) the aircraft is on an official search and rescue mission, or (e) is on approach or departure to one of 5 local airports and is within 3 miles of the airport below 3,000 feet AGL. For flights authorized under paragraphs (b) or (c), the authorization contains specific limitations on the operation, including minimum altitudes.

3. Prohibits operation in certain noise-sensitive areas unless necessary for emergency or Park-related purposes.

4. Prohibits commercial tour operations below 9,000 feet MSL by Part 91 operators unless they obtain a Part 135 certificate and operations specifications which authorize operation in the Grand Canyon National Park Special Flight Rules Area.

5. Prohibits, except when necessary or when specifically authorized for certain purposes, flight closer than 500 feet to any terrain or structure in the canyon.

6. Requires pilots to monitor certain common frequencies and make position reports as specified in their authorization to enter the airspace.

Public Law 100–91

On August 18, 1987, legislation was enacted to require a study of aircraft noise impacts at a number of national parks and to impose flight restrictions at 3 parks: Grand Canyon National Park, Yosemite National park in California, and Haleakala National Park in Hawaii. (Pub. L. 100–91).

Section 3 of Pub. L. 100–91 reads as follows:

Sec. 3 GRAND CANYON NATIONAL PARK.

(a) Noise associated with aircraft overflights at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.

(b) RECOMMENDATIONS.—

(1) SUBMISSION.—Within 30 days after the enactment of this Act, the Secretary [of Interior] shall submit to the Administrator recommendations regarding actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations shall provide for substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight. Except as provided in subsection (c), the recommendation shall contain provisions prohibiting the flight of aircraft below the rim of the Canyon, and shall designate flight free zones. Such zones shall be flight free except for purposes of administration and for emergency operations, including those required for the transportation of persons and supplies to and from Supai Village and the lands of the Havasupai Indian Tribe of Arizona. The Administrator, after consultation with the Secretary, shall define the rim of the Canyon in a manner consistent with the purposes of this paragraph.

(2) IMPLEMENTATION.—Not later than 90 days after receipt of the recommendations under paragraph (1) and after notice and opportunity for hearing, the Administrator shall prepare and issue a final plan for the management of air traffic in the air space above the Grand Canyon. The plan shall, by appropriate regulation, implement the recommendations of the Secretary without change unless the Administrator determines that implementing the recommendations would adversely affect aviation safety. If the Administrator determines that implementing the recommendations would adversely affect aviation safety, he shall, not later than 60 days after making such determination, in consultation with the Secretary and after notice and opportunity for hearing, review the recommendations consistent with the requirements of paragraph (1) to eliminate the adverse effects on aviation safety and issue regulations implementing the revised recommendations in the plan. In addition to the Administrator's authority to implement such regulations under the Federal Aviation Act of 1958, the Secretary may enforce the appropriate requirements of the plan under such rules and regulations applicable to the units of the National Park System as he deems appropriate.

(3) REPORT.—Within 2 years after the effective date of the plan required by

subsection (b)(2), the Secretary shall submit to the Congress a report discussing—

(A) whether the plan has succeeded in substantially restoring the natural quiet in the park; and

(B) such other matters, including possible revisions in the plan, as may be of interest.

The report shall include comments by the Administrator regarding the effect of the plan's implementation on aircraft safety.

(c) HELICOPTER FLIGHTS OF RIVER RUNNERS.—Subsection (b) shall not prohibit the flight of helicopters—

(1) which fly a direct route between a point on the north rim outside of the Grand Canyon National Park and locations on Hualapai Indian Reservation (as designated by the Tribe); and

(2) whose sole purpose is transporting individuals to or from boat trips on the Colorado River and any guide of such a trip.

Rim Level of the Canyon

Under section 3.(b)(1) of Pub. L. 100–91, the Administrator is required to define the rim of the Grand Canyon for use by the Department of the Interior (DOI) in developing recommended flight restrictions. DOI, in its recommendations, forwarded proposed definitions of rim level in each of 4 sectors of the Grand Canyon, in consideration of the widely varying elevation in different areas of the canyon. Rim level elevation of the Canyon was described by DOI as follows: (1) 6,000 feet MSL for the eastern section from Lees Ferry to Boundary Ridge, where the Grand Canyon visibly begins to widen; (2) 7,500 feet MSL from Boundary Ridge to Tuweep (outside the flight-free zones); (3) 6,500 feet MSL from Tuweep to Diamond Creek; and (4) 5,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

The FAA agrees with DOI on the use of 4 separate sectors of the canyon to designate rim elevation. However, the FAA finds that the sectors to be used, and the rim elevation in each sector, for purposes of flight restrictions under section 3.(b) of Pub. L. 100–91, is as follows:

(1) Eastern sector (Lees Ferry to Boundary Ridge): 5,500 feet MSL

(2) Boundary Ridge-Supai (Yumitheska) Point: 7,000 feet MSL

(3) Supai Point-Peach Springs: 6,000 feet MSL

(4) Western sector: 5,000 feet MSL

The altitudes listed by DOI, where they are higher than the minimum rim elevation adopted by the FAA, are considered recommendations for minimum flight altitudes which would be adopted unless they are determined to have an adverse effect on safety.

Department of Interior Recommendations

Pursuant to section 3(b)(1) of Pub. L. 100–91, the Office of the Secretary of the Interior, in separate submissions on December 9, 16, and 29, transmitted recommendations to the FAA for an aircraft management plan at the Park. The entire package submitted to the FAA by the Department of Interior (DOI), which includes a map of the Special Flight Rules Area, a statement of rationale, and a cost-benefit analysis, has been placed in the public docket for this rulemaking. In its submission, DOI cited the provisions of section 3 of Pub. L. 100–91 (set forth in full above) and further noted that:

The legislative history of Public Law 100–91 provides further guidance on the contents of the recommendations from the Secretary [of Interior]. Flight-free zones are to be large areas where visitors can experience the park essentially free from aircraft sound intrusions, and where the sound from aircraft traveling adjacent to the Flight-free Zone is not detectable from most locations within the zone. The boundaries of the Flight-free Zones are to be drawn to maximize protection to backcountry users and other sensitive park resources. The legislative history also makes clear that the law is not intended to eliminate the air tour industry, and that air tours are an appropriate way to enjoy national parks when the resource and visitor protection mandates of the parks can accommodate such use.

Objectives of the recommendations stated by DOI in its submission were as follows:

(1) To protect the public health, welfare, and safety, and the resources and natural environment within the park, including the substantial restoration of the natural quiet and visitor experience, in compliance with the 1975 Grand Canyon National Park Enlargement Act (Public Law 93–620) and with the 1987 Public Law 100–91.

(2) To provide an opportunity for a quality aerial viewing experience for park visitors through a balanced approach that avoids major economic dislocation to the existing air tour industry.

(3) To assist the Secretary of the Interior and the Secretary of Transportation in performing their responsibilities under Section 8 of Public Law 93–620 and Section 3 of Public Law 100–91 concerning minimum altitudes over NPS areas.

The recommendations submitted included both rulemaking and nonrulemaking actions. The DOI statement of rationale for the recommendations is too lengthy for reprinting in full in this preamble, but a summary of that rationale has been included after each recommendation below as applicable. The DOI recommendations which are regulatory in nature and would require rulemaking action by the FAA for implementation may be summarized as follows:

1. Establish special use airspace (SUA), designated as the "Grand Canyon Special Flight Rules Area" and classified as prohibited airspace, over the geographical boundaries of the Grand Canyon from the surface to as high as 14,500 feet MSL.

Rationale: Necessary to restore natural quiet and experience of the Park.

—Voluntary controls have proven ineffective.

—Special Use Airspace (SUA) designations are commonly understood by pilots.

—SUA could be implemented by moving only 3 low-altitude airways and without impact on high-altitude jet routes.

—Precedent exists for prohibited airspace at the Boundary Waters Canoe Area.

—FAA definition of prohibited area is applicable to national parks.

2. Establish within the Grand Canyon Special Flight Rules Area three types of zones:

a. *Below Rim Level Zone.* Aircraft flight would be prohibited below the rim of the canyon with limited exceptions for NPS administrative flights; flights to Supai and Hualapai Indian reservations; and certain flights transporting persons to or from boat trips on the Colorado River. Rim level elevation of the Canyon will be considered as follows: (1) 6,000 feet MSL for the eastern section from Lees Ferry to Boundary Ridge, where the Grand Canyon visibly begins to widen; (2) 7,500 feet MSL from Boundary Ridge to Tuweep (outside the flight-free zones); (3) 6,500 feet MSL from Tuweep to Diamond Creek; and (4) 5,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

Rationale: Prohibition of flights below rim is required by Pub. L. 100–91. [FAA note: Pub. L. 100–91 requires that this prohibition be included in the DOI recommendations but not in the final regulation adopted by the FAA].

—Mitigates impact on archeological sites, bighorn sheep, and peregrine falcons.

—Elevations are based on the Kaibab Limestone and the lower of the 2 rims in each sector.

—Aircraft will not be allowed "in" the canyon.

—Reduces noise, visual intrusion of aircraft, and invasion of privacy.

—Permits continuation of flight above the rim in some areas, in response to public comment.

—Prohibition on flights below the rim is relatively easy to enforce.

—Most air tour operators have stated they can operate tours above rim level.

b. *Flight-Free Zones.* Flight would be prohibited, with the exception of the categories of flights excepted from flight below the rim, in 4 large areas together encompassing 530,000 acres of 44 percent of the total park area:

(1) *Desert View Flight Free Area.* The southwest corner of this zone begins at the park boundary south of Papago Point such that the flight corridor between this Flight-free Zone and the Bright Angel Flight-free Zone to the west is 2 miles wide. From the Park's southern boundary, the Flight-free Zone boundary extends north-northeast on a magnetic heading of approximately 356° to a point about one-half mile east of Unkar Rapids on the Colorado River. From the point, it turns east on a magnetic heading of approximately 071°, passing approximately one-fourth mile south of Comanche Point and following that heading to a point three-fourths of a mile west of the Park's eastern boundary. The Flight-free Zone boundary then turns due south on a magnetic heading of approximately 166° passing just west of Cedar Mountain until it reaches that park's southern boundary and follows the park boundary back to the point of origin.

(2) *Bright Angel Flight Free Zone.* The southeast corner of this zone begins at the corner of the Park boundary south of Moran Point. From that corner, the Flight-free Zone boundary extends northeast on a magnetic heading of approximately 356° to Jupiter Temple and continues to Gunther Castle. From Gunther Castle, it turns northwest on a magnetic heading of approximately 281° to Brady Peak, then due west on a magnetic heading of 256° crossing the North Rim between Vista Encantadora and Point Imperial. The Flight-free Zone boundary passes over Greenland Lake and Lower Thompson Spring as it crosses the North Rim until it reaches the canyon rim at Dragon Creek. At that point, the Flight-free Zone boundary turns southwest on a magnetic heading of approximately 201° passing just west of Claude Birdseye Point, over Boucher Rapids on the Colorado River, and west of cocopa Point on the South Rim until it reaches the Park's southern boundary. At the Park boundary, the Flight-free Zone boundary turns southeast on a magnetic heading of approximately 114° following the line of the Boundary Road until that line connects again with the Park boundary (excluding a small section of Park land from the Flight-free Zone). The Flight-free Zone boundary then follows the Park boundary back to its point of origin, except that all Park land within a five mile radius of the airport control tower in Tusayan is excluded from the Flight-free Zone.

(3) *Shinumo Flight Free Zone.* The southeast corner of this zone begins at the park boundary southwest of Mescalero Point such that the flight corridor between this Flight-free Zone and the Bright Angel Flight-free Zone to the east is two miles wide. From the southeast corner of the zone, the Flight-free Zone boundary extends northeast on a magnetic heading of approximately 021° passing just west of Crystal Rapids on the Colorado River to the northern tip of The Dragon. From that point on The Dragon, it turns northwest on a magnetic heading of approximately 339° to the Park's northern boundary at an intersection of several dirt roads six miles east of the corner of the Park boundary near Powell Plateau. From that road intersection, the Flight-free Zone boundary then follows the Park boundary due west on a magnetic heading of approximately 256° to a small point of land which separates Castle Canyon from the canyon to the west of Castle Canyon containing Powell Spring. That small point is approximately one-fourth mile east of the corner of the Park boundary near Powell Plateau. From the point, the Flight-free Zone boundary turns southwest on a magnetic heading of approximately 214° crossing the northwest portion of Powell Plateau, crossing the Colorado River approximately two miles east of Forster Rapids, and following that line past the head of Forster Canyon to the Park's southern boundary. The Flight-free Zone boundary then follows the Park boundary back to its point of origin.

(4) *Toroweap to Thunder River Flight Free Zone.* From the confluence of Havasu Canyon (Cataract Canyon) with the Colorado River, the Flight-free Zone boundary travels northeast on a magnetic heading of approximately 064°, passing just north of Deubendorff Rapids on the Colorado River and directly over Steamboat Mountain, then reaching the North Rim and the park's northern boundary at the southern part of Timp Point. From Timp Point, the Flight-free Zone boundary follows the Park boundary west to a point in Toroweap Valley due east of the Tuweep Airport where the Park boundary makes a north-south to east-west corner. At that corner, the Flight-free Zone boundary continues due south to a point approximately two and one-half miles south of that corner of the Park boundary. It then turns due west for approximately three and one-half miles to the base of the Uinkaret Mountains, where it then turns due south to the Colorado River approximately one and three-quarter miles west of Lava Falls Rapids. The Flight-free Zone boundary then follows the Colorado River east to the Flight-free Zone's point of origin at the river's confluence with Havasu Creek.

Rationale:—Establishment of flight-free zones is required by Pub. L. 100–91.

—Nearly 100 percent of front country use would be protected from aircraft overflight.

—Large flight-free zones are required to protect sensitive areas in the center of the zones from lateral impacts.

—More than 90 percent of backcountry user nights occur within the recommended flight-free zones.

—Parts of the zones include remote areas, promoting the "wilderness experience."

—Zone boundaries permit a full variety of economically viable air tours.

—Flight corridors are drawn to minimize impacts on Park users while permitting a variety of air tours.

—The 14,500-foot MSL ceiling of the flight-free zones will prevent any overflight by most tour and general aviation aircraft.

c. *Above Rim Level Zone.* Flight above rim level and outside of flight-free zones, to 14,500′ MSL, would be subject to special route and altitude regulations for separation of aircraft. In some cases, the space between flight-free zones is limited to 2-mile wide corridors in which any air tours and transient general aviation operations would be confined. DOI notes:

The 2-mile width of these corridors may necessitate some provisions by FAA to achieve separation of aircraft. This separation may be achieved by precluding passing of other aircraft within the corridor, designation of the corridor for one-way traffic only, and/or application of the hemispherical rule (FAR 91.109) within the corridor (where travel eastbound within the corridor would be at odd elevations plus 500 feet and travel westbound would be at even elevations plus 500 feet). The minimum elevations in these corridors, based on adjacent rim elevations, will be 7,500 feet MSL.

3. Retain the existing prohibition on operation of aircraft within 500 feet of any terrain or structure within the canyon.

4. Consider adoption of the "hemispherical rule" (§ 91.109), which specifies different altitudes for eastbound and westbound aircraft, for aircraft operation outside of the flight-free zones.

6. Modify or eliminate low-altitude Federal airways V–257, V–293, and V–210 to avoid the flight-free zones and preferably the entire Special Flight Rules

Area. On a temporary basis while the matter is being studied, NPS recommended that V–257 and V–293 be relocated to travel between the Page VOR and the Tuba City VOR, and that V–210 be moved 5 miles south of its present location in the vicinity of the Park.

Exceptions to the restrictions contained in the recommendations would be allowed only in an emergency, in the case of inclement weather, or if otherwise necessary for safety of flight. The Manager of the FAA Las Vegas Flight Standards District Office (FSDO) and the Superintendent, GCNP will jointly develop procedures to address these exceptions.

DOI also recommended that the FAA undertake the following items which would not require rulemaking action at the present time:

1. Establish approach and departure procedures for all local airports and landing strips to ensure aerial access. (This may require regulatory adjustment to the Special Flight Rules Area.)

2. Adopt a data-gathering plan to monitor the effectiveness of the new regulations, and report to Congress within 2 years after the final FAA regulations are implemented on the results of the monitoring.

3. Develop a program, jointly with the NPS, for the enforcement of the rules; the education of pilots on the requirements adopted; issuance of a separate chart for the Grand Canyon; establishment of an information radio message for pilots; and continuing contacts with the aviation community.

4. Study the feasibility of relocating Jet Routes J–110 and J–76 away from the Park, and direct ATC to deny requests for high-altitude deviations over the Park for sight-seeing purposes.

5. Establish a working group consisting of representatives from the NPS, FAA, and other interested Federal agencies; aviation industry organizations and affected operators; congressional staff; local property owners; and environmental groups. The purpose of the group would be to review and discuss information and monitoring data regarding implementation of the FAA final plan. The group would meet at least 4 times a year.

6. Ensure that the Department of Defense eliminates unnecessary military flights over the Park.

7. Continue to route air tour operators away from Point Imperial and Toroweap even though those locations are not within the NPS recommended flight-free zones.

8. Study the feasibility of establishing positive FAA radar control of the airspace within the Special Flight Rules Area above the rim level of the canyon, as well as the approaches and departures at Grand Canyon Airport.

9. Conduct a series of joint NPS/FAA studies including but not limited to: (1) Measurement of aircraft and ambient sound levels within flight-free zones to determine if substantial restoration of natural quiet has been achieved; (2) analysis of opportunities to achieve better separation of aircraft traffic in the vicinity of Grand Canyon Airport; (3) studies of park user reaction to various sound levels directed at determining appropriate noise standards for different park use zones; and (4) an analysis of the use of "quiet" aircraft technology. If, at the end of the 2-year study period, research indicates that low-noise aircraft would be effective in achieving restoration of the natural quiet of the park, a program would be developed for quiet aircraft utilization.

Discussion of Recommendations

For purposes of developing a proposed regulations based on the DOI recommendations, the FAA notes that Pub. L. 100–91 does not require automatic adoption of all of the recommendations as received.

In some cases, recommendations are within the scope of Pub. L. 100–91 but, for reasons of safety, may warrant modification or nonadoption by the FAA as discussed below under "Safety considerations."

In other cases, some of the recommendations may not be entirely within the scope of Pub. L. 100–91 and, therefore, would not require mandatory adoption by the FAA under that statute. First, the statute limits the recommendations to "actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights." For the purpose of this notice the FAA has assumed without question that the substantive recommendations made by the DOI are, within the intent of Pub. L. 100–91, necessary for the protection of canyon resources. However, the FAA does not considered the *form* of the recommended restrictions to be subject to the mandatory effect of the statute. Accordingly, for example, the regulation proposed by the FAA does not categorize the Special Flight Rules Area as "special use airspace" or a "prohibited area," as recommended by DOI.

Second, the scope of the aircraft management plan mandated by Pub. L. 100–91 is limited to "the airspace above the Grand Canyon" (although the plan is not limited to airspace within the boundaries of the Park). DOI recommended that the special flight rules area be established over "the area recognized geographically as the Grand Canyon of the Colorado River, including lands outside the political boundary of GCNP." However, the descriptions of several of the flight-free zones, and the depiction of the Special Flight Rules Area on the map transmitted with the narrative recommendations, include areas outside of the canyon proper.

To the extent the recommendations relate to airspace which is not "above the Grand Canyon," the recommendations cannot be considered to be within the mandatory provisions of Pub. L. 100–91. The recommended boundaries of this airspace have been included in the rule proposed in this notice without significant change (except for the safety-related modifications noted below), but the FAA solicits public comment on whether the proposed restrictions above areas other than the Grand Canyon itself should be adopted as proposed.

Subject to the possible exceptions described above, however, the FAA has proposed a regulation which incorporates the DOI recommendations as received, including the revised boundaries of the Special Flight Rules Area and an increase in the upper limit of the area to 14,500 feet MSL.

Safety considerations

Section 3.(b)(2) of Pub. L. 100–91 contemplates that the Administrator may determine that implementing the DOI recommendations exactly as submitted would adversely affect aviation safety. If the Administrator does find an adverse impact of flight safety, then, after consultation with DOI and notice and opportunity for public comment, he may revise the recommended regulations in a manner consistent with the environmental purposes of paragraph 3.(b)(1).

The recommendations submitted by DOI on December 29 have a substantial impact on aviation in the vicinity of the Grand Canyon, in that aircraft flight is for all practical purposes prohibited in large areas. The recommended restrictions may require circuitous and inefficient routings for transient operations and may have an adverse economic impact on commercial operators conducting public tours of the canyon. Pub. L. 100–91 does not provide for modification of the DOI recommendations by the FAA on the basis of operational efficiency (not amounting to a safety problem) or economic impact, and the FAA has incorporated the restrictions recommended by DOI without regard to efficiency or economic impact.

However, certain of the recommendations raise genuine operational safety concerns. In some cases, the regulation proposed by the FAA includes provisions which differ from the DOI recommendations to some degree. The FAA changes/areas of concern are as follows:

(1) The FAA has proposed to modify the four flight-free zones to establish additional north-south routes to relieve compression of traffic and avoid a concentration of aircraft arriving at Grand Canyon Airport from one direction. Two additional north-south flight corridors would be established between Shoshone Point and Walhalla Plateau, in the eastern canyon, and near Tuckup Canyon west of Havasu Canyon. Except for the 2 added corridors, the 3 flight-free zones proposed would be substantially identical to the coverage of the 4 zones recommended by DOI.

The added western corridor would provide a direct route for transient northbound and southbound traffic on a line between the Peach Springs VOR and the Page VOR. Use of this route will keep transient operations from having to use the corridor between the Shinumo and Toroweap/Thunder River Flight-Free Zones, which will likely be used by tour operators on a regular basis. The western corridor will, therefore, avoid conflict between transient and air tour traffic in a relatively confined area. The additional corridor will have little if any measurable environmental impact in view of the relatively small number of aircraft which need to transit that area.

The additional eastern corridor would minimize a traffic conflict where the middle corridor recommended by DOI joined the south rim. Without the additional corridor, tour aircraft flying a counterclockwise circle tour from Grand Canyon Airport would continuously merge with tour traffic eastbound to Grand Canyon Airport from Las Vegas. The additional eastern corridor would also prevent a situation in which all air tour and eastbound aircraft approached the Grand Canyon Airport from the same direction—the east. The modified corridor avoids both problems by routing many aircraft into the airport via a straight-in approach from the northeast. This approach is frequently used at present, and it is a benefit to ATC to have arriving traffic divided in this manner. The new eastern corridor crosses the rims at locations with relatively less noise sensitivity (Shoshone Point on the South Rim and Walhalla Plateau on the North Rim), and passes east of the Phantom Ranch and Bright Angel Trail.

It is possible that the DOI central corridor, or one or more of the other 5 proposed corridors, is no longer necessary, or that the addition of the new eastern corridor may not resolve all problems in the DOI central corridor. The FAA requests comments on the appropriate number and location of flight routes through the canyon to ensure safe operation by tour operators and transient aircraft.

(2) The flight corridors proposed by the FAA would be a minimum of 4 miles in width rather than the 2 miles recommended by DOI, to permit adequate maneuvering room for pilots and in recognition of the difficulty of precise navigation above the canyon terrain. However, the use of VOR radials to define the corridors, where possible, will keep most traffic on the corridor centerline. Corridors which are not defined by a VOR radial (or which use a VOR whose signal may not be receivable in the corridor at all altitudes) may need to be greater than 4 miles in width, in consideration of the lower precision of navigation by visual means or area navigation systems.

(3) The FAA is concerned that the elimination or relocation of the 3 Federal airways as recommended by DOI would have an adverse impact on air navigation and IFR (instrument flight rules) operations in the Grand Canyon area. Pilots operating IFR may be in clouds or other adverse weather conditions. A circuitous routing or the necessity for longer flight legs could make such operations more complex and reduce fuel reserves. All 3 airways are in use by IFR flights on a daily basis at altitudes below 14,500 feet MSL. The rule proposed does not include an exclusion of IFR operations, although the final rule could exclude IFR operations based on information received during the comment period.

The recommendation to relocate or modify the 3 local airways would be accomplished by an airspace action under Part 71 of the Federal Aviation Regulations, and, therefore, has not been included in the proposed SFAR. An alternative to complete relocation of the affected airways would be to retain the airways with a minimum altitude of 14,500 feet MSL, which would keep operations clear of the Special Flight Rules Area. The agency specifically requests comments on the safety impacts of including IFR operations within the scope of the SFAR, and of the various options for modification of the existing Federal Airway structure in the Grand Canyon area.

The FAA specifically solicits comments on whether the above changes to the DOI recommendations are sufficient to ensure safe aircraft operation or, alternatively, whether the provisions are necessary for safe operation. The agency further requests comments on whether any of DOI's other recommendations should be modified in the interest of air safety in the final rule.

A final agency determination of whether the recommendations as submitted have an adverse effect on safety, as provided in Pub. L. 100-91 section 3.(b)(2), will be made after consideration of public comments. The final rule issued after consultation with the Office of the Secretary of the Interior will reflect that determination. The final rule may be more or less restrictive than the proposal contained in this notice, depending on the final determination of the safety impacts of the DOI recommendations.

If, after the rule takes effect, it become apparent that there is a safety problem with operation under the rule as adopted, the FAA will take action to correct the problem, including modification of the rule if necessary.

Non-rule recommendations

Several of the DOI recommendations were intended as part of the mandatory plan, although they are actions which do not require rulemaking by the FAA under the Administrative Procedures Act. Other recommendations, such as establishing radar control of the area and relocating high altitude jet routes, are proposed for consideration or feasibility studies only at this time. While not required as part of the current rulemaking process, the FAA is providing the following notice of its proposed responses to the nonrule recommendations.

1. *Approach and departure procedures for local landing strips and airports.* The DOI recommended that procedures be developed jointly by the FAA, NPS and other agencies, and local landowners, to ensure aerial access to these landing areas. The FAA agrees that access to existing airports and airstrips must be retained. Accordingly, the FAA will jointly develop airport access procedures as recommended. Because access to some of the airports would otherwise be prohibited by the Special Flight Rules Area zones recommended by DOI, the access procedures must be in place by the effective date of the rule.

Most of the affected facilities are not near recommended flight-free zones or other noise-sensitive areas. Also, these airstrips are small facilities, without control towers, and with a relatively low level of traffic. Accordingly, the FAA

believes that a simple, common procedure for most of the airports would be preferable to more complex, specialized procedures for each. For example, an exception to the Special Flight Rules Area could be established for operations in the airspace from the surface to 3,000 feet AGL within 3 nautical miles each airport. Special procedures would be developed, if necessary, in coordination with all interested parties for two airports: Tuweep Airport, which is located near the Thunder River/Toroweap Flight-Free Zone, and the new landing strip on south rim of the canyon in the Hualapai Indian Reservation, which is close to designated flight routes through the west canyon area.

The FAA specifically requests comments on appropriate access provisions for the affected airports.

2. *Adopt a data-gathering plan to monitor the effectiveness of compliance with the new regulations.* The FAA will cooperate with NPS in developing a monitoring plan and will provide NPS with enforcement data.

3. *Develop an education, engineering, and enforcement program jointly with the NPS.* Enforcement of the regulations will be conducted by the FAA under existing laws, regulations, and policies, and a special program for enforcement of the Grand Canyon flight restrictions is not necessary. The FAA will cooperate with NPS in development of an education program and informational materials on the restrictions. The agency will also consider a special flight chart for the Grand Canyon and informational radio messages, if feasible and effective. Special flight rules for the Grand Canyon are now printed on an extra panel of the Las Vegas Sectional Chart, which the FAA believes is far more widely distributed than would be a separate special chart.

4. *Study the feasibility of relocating Jet Routes J–110 and J–76 away from the Park, and direct ATC to deny requests for high-altitude deviations over the Park for sight-seeing purposes.* The FAA is taking measures to ensure that aircraft on IFR flight plans at altitude do not deviate from course over the Park. The agency does not believe that any possible impacts of aircraft using Jet Routes J–110 and J–76, which are used by aircraft above 18,000 feet MSL, warrant relocation of those routes. However, the agency will reconsider the request following completion of the 2-year study now being undertaken by the NPS.

5. *Establishing a working group consisting of representatives from the NPS, FAA, and other interested parties.* The Las Vegas Flight Standards District Office (FSDO) has for many years held periodic meetings with tour operators and other parties to promote safe operation in the Grand Canyon area. The FSDO will participate in the meetings suggested by DOI, in addition to continuing the tour operator meetings now held.

6. *Ensure that the Department of Defense eliminates unnecessary military flights over the Park.* Military flights are subject to SFAR 50–1 and will be subject to the FAA regulation adopted following this proposal. Low-altitude military flights over the Park will continue to be prohibited. To the extent military low-level training routes are located near the Grand Canyon, the FAA will work with the Department of Defense to relocate the routes or otherwise mitigate any possible environmental impacts where possible. The FAA notes that both the Air Force and the Navy have in effect or are developing internal regulations to prohibit unnecessary flight by their pilots above national parks.

7. *Continue to route air tour operators away from Point Imperial and Toroweap.* Under current SFAR 50–1, both tour operations and transient general aviation flights avoid the Point Imperial and Toroweap overlook areas. Toroweap is also included in a flight-free zone recommended by DOI and proposed for adoption by the FAA. Final tour routes have not been developed or approved for regulations recommended by DOI, and will not be made final until after comments are received and a final rule adopted. While the tour routes will be significantly revised to reflect the expanded flight-free zones recommended by DOI, the FAA will continue to route tour flights away from Point Imperial if feasible.

8. *Study the feasibility of establishing positive FAA radar control of the airspace within the Special Flight Rules Area above the rim level of the canyon.* While the Grand Canyon location does not meet the standard criteria for establishment of a radar facility, the FAA will continue to review the utility of such a facility at that site.

9. *Conduct a series of joint NPS/FAA studies.* The 2-year study required by Pub. L. 100–91 is discussed below.

Two-year study

Public Law 100–91 provides that within 2 years after the effective date of the aircraft management plan required by the law, the Secretary of the Interior shall submit to Congress a report discussing whether the plan has succeeded in substantially restoring the natural quiet in the park, and other matters, including possible revisions in the plan. DOI states that if "goals are not being met, then additional actions, measures and/or procedures for noise abatement and/or enforcement may be implemented at the end of the 2-year study period."

The FAA is providing technical assistance to the NPS in the studies of aircraft noise and park user perception, and will provide any other assistance necessary to evaluate the effectiveness of the regulations on a continuing basis. The FAA will continually assess the safety of aircraft operation under the rules, and at the end of the 2-year study period will conduct a review of the general effectiveness and operational impacts of the restrictions. As noted in the DOI recommendations, the report which DOI submits to Congress after the 2-year study period may include recommendations for additional actions for noise abatement. While these recommendations would not have the mandatory effect of the recommendations made under paragraph 3.(b)(1) of Pub. L. 100–91, the FAA would consider these recommendations in developing any proposed revisions to the final rule issued under paragraph 3.(b)(2).

The FAA notes, however, that the noise and user perception studies, rather than supporting additional restrictions, may well indicate that the restrictions then in effect are more than is required to maintain appropriate noise levels in the Park. In the event the FAA will work with the NPS to develop revised regulations which are less burdensome on aviation.

As recommended by DOI, the FAA will include in its review of the restrictions consideration of the use of "quiet" aircraft. The FAA assumes that this recommendation involves the application of less restrictive overflight regulations (e.g., lower altitudes or more favorable routes) for types of aircraft which produce less than a specified level of noise on the surface at a certain distance from the surface.

The Proposed Rule

In accordance with the provisions of section 3.(b)(2) of Pub. L. 100–91, the FAA proposes an amendment to Special Federal Aviation Regulation (SFAR) 50–1 to implement recommendations submitted by the Department of the Interior pursuant to section 3.(b)(1) of the law. In summary, the proposed amendments would do the following:

1. Raise the ceiling of the Grand Canyon National Park Special Flight Rules Area from 9,000 feet MSL to but not including 14,500 feet MSL. DOI recommended that the area be special

use airspace classified as a prohibited area, but this recommendation is inconsistent with FAA airspace designations and was not incorporated in the proposal. The restrictions which apply in the airspace will be essentially as requested by DOI, however.

2. Alter the boundaries of the existing Special Flight Rules Area to follow the Grand Canyon National Park boundary along portions of the northern border of the area and to include the northeast extension of the canyon to Lees Ferry. The area is north of the Grand Canyon National Park and north of the canyon itself. Both the Bureau of Land Management of the Department of the Interior and the Forest Service of the Department of Agriculture, which administer the affected lands, had previously objected to the establishment of the Special Flight Rules area above those lands.

3. Prohibit operation by aircraft below certain minimum altitudes, with specific exceptions which provide for the limited exceptions contained in Pub. L. 100–91: (a) NPS administrative flights; (b) flights required for the transportation of persons and supplies to and from Supai Village and the lands of the Havasupai Indian Tribe of Arizona, and (c) flights which operate on a direct route between a point on the North Rim outside of the Park and locations on the Hualapai Indian Reservation (as designated by the tribe) and whose sole purpose is transporting individuals to or from boat trips on the Colorado River and any guide of such a trip.

Minimum allowable flight altitudes in each of 4 sectors of the canyon (1) 6,000 feet MSL for the eastern section from Lees Ferry to Boundary Ridge, where the Grand Canyon visibly begins to widen; (2) 7,500 feet MSL from Boundary Ridge to Supai Point (Yumitheska Point); (3) 6,500 feet MSL from Supai Point to Diamond Creek; and (4) 5,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

4. Prohibit operation in three "flight-free zones" unless necessary for the purposes enumerated in paragraph 3 above for flight below minimum flight altitudes. The flight-free zones proposed are:

(a) *Desert View Flight Free Zone.* An area around the Desert View Overlook. The area between the Desert View and Bright Angel/Shinumo Flight-Free Zones is designated the "Zuni Point Corridor."

(b) *Bright Angel/Shinumo Flight-Free Zone.* An area substantially identical to the Bright Angel and Shinumo Flight-Free Zones recommended by DOI, but with exceptions for 2 flight corridors: One 2 miles either side of the GCN VOR 021° radial ("Shoshone Point Corridor"), and the other 2 miles either side of a line extending from a point just west of Cocopa Point to the Dragon Creek Canyon on the north rim ("Cocopa Point Corridor"). The Cocopa Point Corridor would be nearly identical to the central flight corridor recommended by DOI, except for an increase in width from 2 miles to 4 miles and a slight change in alignment to follow the 204° radial off of the Page VOR.

(c) *Toroweap/Thunder River Flight Free Zone.* An area nearly identical to the Toroweap/Thunder River Zone recommended by DOI, except for an additional north-south flight corridor west of Havasu Canyon. ("Tuckup Canyon Corridor"). The flight corridor between the Bright Angel/Shinumo and Toroweap/Thunder River Flight-Free Zones ("Fossil Canyon Corridor") would be retained substantially as recommended by DOI.

A total of five corridors for aircraft flight above minimum flight altitudes are provided through or between the zones. The description of the zones has been modified to use aviation terminology and references to navigation aids, where possible. The FAA has also modified the description of the zones to add 2 new corridors: An eastern corridor on a line between Shoshone Point on the south rim and Walhalla Plateau on the north rim, and a western corridor west of Havasu Canyon. The modifications would not significantly change the boundaries or area of the zones recommended by DOI.

5. Specify routes and altitudes for operation in the five corridors between and through the flight-free zones and outside of the zones. The procedures would replace the transient routes contained in SFAR 50–1. The procedures proposed in this notice are for discussion only and should not be considered representative of the agency's final decision. The permanent procedures adopted in the final rule will depend on the number and configuration of flight-free zones and flight corridors adopted, and will be determined after review of all public comments.

6. Retain the existing prohibition on flight closer than 500 feet to any terrain or structure in the canyon, except when necessary or when specifically authorized for certain purposes.

7. Retain the existing requirement to monitor a common frequency in each sector of the canyon. The requirment for air tour operators and other specially authorized flights to make position reports is deleted from the rule as unnecessary, because it is included in the authorizations for these operators.

Rulemaking Timetable

Section 3.(b)(2) of Pub. L. 100–91 provides that the FAA will issue a plan implementing the Department of Interior recommedations within 90 days after receiving those recommendations. However, if the FAA determines that the recommendations as submitted would have an adverse effect on safety, then within 60 days of that determination the agency will issue regulations revised to eliminate the adverse effects on safety. The FAA interprets § 3.(b)(2) to provide up to 60 days in addition to the basic 90-day period for issuance of the regulations when the recommendations would have an adverse safety impact.

The text of the DOI recommendations was formally transmitted to the FAA on December 9. The transmittal on that date, however, did not include the map detailing the Special Flight Rules Area or the statement of rationale for the recommendations referred to in the transmittal letter. Both documents were necessary for preparation of a proposal to satisfy the public notice requirements of § 3.(b)(2) and the Administrative Procedure Act. The map was received on December 16 and the statement of rationale, including a cost-benefit analysis, was received on December 29. Accordingly, the 90-day period for the issuance of regulations established by section 3.(b)(2) of Pub. L. 100–91 begins on December 29, 1987. The 90th day following that date is March 28, 1988.

The FAA's preliminary review of DOI's recommendations indicates that some revision of the recommendations will be necessary prior to issuance of a regulation. However, the extent of the revision necessary will not be fully apparent until the FAA has reviewed public comments, following the public hearings and the close of the comment period. Accordingly, the FAA intends to make a determination on the adverse effect on safety after the close of the comment period but within 90 days of the submission of the recommendations, or by March 28, 1988. If no safety modification to DOI's recommendations is necessary, the FAA will issue a final rule as soon as possible after the close of the comment period. If it is determined that modification of the recommendations is necessary for safety, the agency will issue a final regulation within 60 days of the date of that determination.

Comment period

Public Law 100-91 requires that action be taken on the DOI recommendations within 90 days, or by March 28, 1988. Accordingly, the period provided for

public comment on this notice must close before that date. Normally, a minimum of 30 days is provided for public comments on rulemaking proposals. In this case, as a result of the complexity of developing a notice of proposed rulemaking on the DOI recommendations, the proposed rule was not published more than 30 days prior to the statutory limit of March 28. However, the proposal was placed on public display at the **Federal Register** as early as possible, and a substantial comment period has been provided. In consideration of the compressed period provided by Pub. L. 100–91 for development of a regulation, and the statutory 90-day limit of March 28, the FAA finds that good cause exists to publish this notice with a comment period of less than 30 days.

Environmental Review

The National Environmental Policy Act, and Department of Transportation and FAA policies implementing the Act, require environmental assessment of certain agency actions which have an effect on the human environment. It is FAA policy to prepare an environmental assessment of any new or revised air traffic rule or procedure which would routinely route air traffic over noise-sensitive areas at less than 3,000 feet above ground level (AGL). The FAA proposal implementing the DOI recommendations would not route traffic over any noise-sensitive aras that do not already receive aircraft overflight. Also, in most cases, the revised overflight patterns would generally be well above 3,000 feet AGL.

However, in view of the purpose of the legislation mandating the issuance of the regulation, the FAA will conduct an environmental assessment of the changes to existing SFAR 50–1 adopted in the new regulation. The assessment will be prepared and placed in the public docket prior to issuance of the final rule. While the FAA may not alter the recommendations of the Department of the Interior for environmental reasons, public comment is invited on the environmental aspects of this proposal for use in preparation of the assessment. These comments may also be considered by DOI in future recommendations relating to aircraft overflight of the Grand Canyon.

DOI did not submit to the FAA an environmental assessment of its aircraft management recommendations. However, the National Park Service, in May 1986, prepared an environmental assessment of alternatives for an "Aircraft Management Plan" for the Grand Canyon National Park. A copy of 1987 NPS assessment has been placed in the public docket for this rulemaking.

Economic Evaluation

The FAA, under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), is required to conduct a regulatory evaluation of each rulemaking proposal and final rule which would have more than a minimal economic impact. Under Executive Order 12291, rules adopted by the agency must, to the extent permitted by law, have potential benefits which exceed their potential costs and must be the least costly alternative which substantially accomplishes the desired regulatory objective. In this case the FAA, having received the Department of Interior's recommendations, is required by § 3.(b)(2) of the Pub. L. 100–91 to implement those recommendations "without change" unless they would have an adverse effect on safety. The statute does not provide the FAA discretion to reject recommendations on any grounds other than safety, including cost/benefit considerations. Accordingly, the FAA will not unilaterally modify or reject any of the Department of Interior's recommendations solely on the basis that the costs of the recommendation exceed its benefits or that a less costly and equally effective alternative is available.

The Department of the Interior, in developing the recommendations submitted under Pub. L. 100–91, prepared a cost-benefit analysis of the proposal. This analysis was submitted with the DOI recommendations on December 29 and has been included in the FAA public docket for this rulemaking. The DOI analysis may be summarized as follows:

DOI Cost-Benefit Analysis

Costs. The costs considered are the cost to the approximately 40 to 45 air tour operators conducting air tours in the vicinity of the Grand Canyon. The industry consists of both fixed-wing and helicopter operators operating on fixed routes and altitudes, under SFAR 50–1, from points in Arizona, Nevada, New Mexico, Utah, and California. According to the operators, the estimated annual revenue generated by this industry is $30 to $50 million. Essentially all tour passengers are one-time customers.

According to the operators, specific points of interest on air tours can be created or changed in the minds of the public through promotion and advertising.

The two primary features of the [DOI] recommendations which would affect commercial tours are preclusion of below-rim-level flights and establishment of flight-free zones.

Under SFAR 50–1, most fixed-wing operators operate at or above the canyon rim level with no report to DOI of adverse economic consequences. Helicopter operators, and fixed-wing operators in the western section of the canyon, currently operate approximately 1,000 feet below geologic rim level. In both cases the recommendations are not expected to reduce ridership because a similar tour at a level above the rim will be equally attractive to customers.

Establishment of large flight-free zones in the central and eastern sectors of the canyon would not require changes in most Las Vegas-to-Grand Canyon Airport tours. The three Las Vegas-based operators which conduct tours in the central canyon would relocate the tours to a southerly, more direct route, resulting in a shorter and more economical flight. Alternatively, they could use flight corridors for a slightly longer trip.

Fixed-wing and helicopter operators from Tusayan could continue to provide circle tours, with less flexibility than at present. Helicopters could offer tours in the eastern section of the park or over the Havasupai Indian Reservation. Fixed-wing tours could offer either east end tours or the "Grand Circle" tour. The time to reach the canyon rim would be increased approximately 5 minutes for helicopters and 3 minutes for fixed-wing aircraft.

It is expected that additional costs would be passed on to the consumer without a decrease in ridership, based on experience with an approximate 10% increase in prices in 1987. It is also assumed that costs for revision of literature and reprogramming of tour narrations are included in the normal operating budgets of most tour operators.

Benefits. Benefits would primarily accrue to the resources and visitors to Grand Canyon National Park and the surrounding area included within the boundary of the Special Flight Rules Area.

Based on the best available information, the recommended flight-free zones will mitigate the impact of aircraft noise upon, and protect the experience of, essentially all 3 million front country users and over 90 percent of the 350,000 backcountry below rim users annually. These positive benefits to the natural quiet and experience of the park resulting from noise reduction are extremely difficult to quantify in monetary terms, and must be viewed in a qualitative rather than quantitative sense. Other benefits would be

mitigation of potential impacts to park wildlife during critical foraging and/or reproductive cycles and mitigation of potential impacts to archeological sites.

Conclusion. On balance, in view of the minimal cost expected to the air tour operators and the significant benefits to park resources and visitors, the National Park Service concludes that the recommended rules are cost-beneficial.

FAA Evaluation

The FAA does not have quantitative information that would tend to either support or alter the conclusions of the DOI analysis. The FAA notes that the proposed rule, with additional north-south flight corridors, would have less of an impact on tour operators and cause less delay to north- and southbound transient operations, an impact not considered by NPS. There is no positive or negative safety impact of the proposed rule in comparison with SFAR 50–1.

While the FAA may not consider economic impact in this rulemaking, the Department of the Interior may at some point wish to revise its recommendations on this basis, particularly as more specific information on actual noise impacts is developed through the NPS noise study now in progress. The FAA notes that § 3.(b)(2) of Pub. L. 100–91 requires that the FAA accept public comment on the proposed rule but does not limit the comment to safety-related matters. Accordingly, comments on the economic impacts of the proposed regulation will be included in the docket and may serve to create a record for use in future refinement of the regulation proposed in this notice.

For the reasons set forth above, the FAA has determined that this proposed amendment (1) is not a major rule under Executive Order 12291, and (2) is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires agencies to identify rules which will have a significant economic impact on small entities, including small businesses. The annualized threshold of significant economic impact for a Part 135 air taxi with 9 or fewer aircraft is considered by the FAA to be $3,700 (in 1986 dollars). On information currently available, the FAA cannot certify that the proposed rule would not have a significant effect on a substantial number of small entities. However, the FAA has not conducted a regulatory flexibility analysis of the proposed rule because the provisions of Pub. L. 100–91 preclude the adoption of alternative measures.

List of Subjects in 14 CFR Parts 91 and 135

Aircraft, Aviation safety, Air taxi and commercial operators, Grand Canyon.

The Proposed Special Federal Aviation Regulation

For the reasons set out above, the Federal Aviation Administration proposes to amend 14 CFR Parts 91 and 135 as follows:

PARTS 91 AND 135—[AMENDED]

1. The authority citation for Part 91 continues to read:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for Part 135 continues to read:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

3. Special Federal Aviation Regulation No. 50–1 is revised to read as follows:

SFAR No. 52–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

Section 1. *Applicability.* This rule prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area:

That airspace extending upward from the surface up to but not including 14,500 feet MLS within an area bounded by a line beginning at lat. 36°09'30" N., long 114°03'00" W.; northeast to lat. 36°14'00" N., long. 113°09'50" W.; thence northeast along the boundary of the Grand Canyon National Park to lat. 36°18'40" N., long. 112°01'15" W.; to lat. 36°53'00" N., long. 111°44'30" W.; to lat. 36°53'00" N., long. 111°33'00" W.; to lat. 36°19'00" N., long. 111°50'50" W.; to lat. 36°17'00" N., long. 111°42'00" W.; to lat. 35°59'30" N., long. 111°42'00" W.; to lat. 35°57'30" N., long. 112°03'20" W.; thence counterclockwise via the 5 statute mile radius of the Grand Canyon Airport reference point (lat. 35°57'09" N., long. 112°08'47" W.) to lat. 35°57'30" N., long. 112°14'00" W.; to lat. 35°57'30" N., long. 113°11'00" W.; to lat. 35°42'30" N., long. 113°11'00" W.; to 35°38'30" N; long. 113°27'00" W; thence counterclockwise via the 5 statute mile radius of the Peach Springs VORTAC to lat. 35°41'20" N., long 113°36'00" W; thence to the point of beginning.

Sec. 2. *Definitions.* For the purposes of this special regulation—

"Park" means the Grand Canyon National Park.

"Special Flight Rules Area" means the Grand Canyon National Park Special Flight Rules Area.

Sec. 3. *Aircraft operations: general.* Except in an emergency, no person may operate an aircraft in the Special Flight Rules Area unless the operation—

(a) Is conducted in accordance with the following procedures:

Note: The following procedures do not relieve the pilot from see-and-avoid responsibility or compliance with FAR 91.79.

(1) Unless necessary to maintain a safe distance from other aircraft or terrain—

(i) Avoid the areas described in Section 4; and

(ii) Remain above the altitudes listed in Section 5.

(2) *Eastbound:*

(i) *Entry. From LAS/west:* From LAS-Lake Meade area, cross the Peach Springs VOR 308° radial 1 to 2 miles north of the Pearce Ferry Airport (PGS VOR approximately 45 DME) level at 9,500, 11,500 or 13,500 feet MSL. Proceed across the Shivwits Plateau and across the Colorado River. Turn to follow the river eastbound, remaining south of the river, and transition to the enroute procedure under paragraph (a)(2)(ii) of this section.

Alternate LAS entry: Follow Alternate 2 of the west canyon procedure under paragraph (a)(5)(ii) of this section and transition to the enroute procedure under paragraph (a)(2)(ii) of this section when east of the Shivwits Plateau.

From Peach Springs area: From Peach Springs/south, cross the Peach Springs VOR 058° radial northbound at 9,500, 11,500, 13,500 feet MSL. Intercept and follow the Colorado River north, remaining to the right (east) of the river. Transition to the enroute procedure under paragraph (a)(2)(ii) of this section when east of the Shivwits Plateau.

(ii) *En Route.* Maintain 9,500, 11,500 or 13,500, feet MSL and follow the Colorado River. Remain to the south of the river and clear of the Toroweap/Thunder River Flight-Free Zone. Approaching Supai (Yumitheska) Point, at Havasu Canyon (at or before intercepting Grand Canyon VOR 290° radial) turn to the southeast for approach to Grand Canyon National Park Airport or for transit through the airport traffic area. Remain south of the Grand Canyon VOR 290° radial and at least 2 miles south of the south canyon rim, and contact Grand Canyon Tower before entering the Grand Canyon National Park Airport Traffic Area.

(3) *Southbound from Marble Canyon.* From Marble Canyon or north of the Special Flight Rules Area along the Colorado River, enter the area at 10,500 feet MSL. Proceed south/southwest to the Walhalla Plateau (GCN VOR 021° radial, 19 DME) and remain clear of the Bright Angel/Shinumo Flight-Free Zone.

(i) *Approaching Grand Canyon National Park Airport:* Proceed south through the Shoshone Point Corridor (021° radial inbound) to the GCN airport traffic area, crossing the south rim at Shoshone Point. Contact Grand Canyon Tower before entering the airport traffic area or descending below 9,600 feet MSL. Remain above 9,600 feet MSL and east of the airport until

communications with Grand Canyon Tower are established.

(ii) *Other southbound traffic:* From Marble Canyon or north of the Special Flight Rules Area along the Colorado River, enter the area at 10,500 feet MSL. Proceed south following the Colorado River. Depart the area southbound through the Zuni Point Corridor or to the east along the Little Colorado River.

(4) *Northbound from GCN.* Depart Grand Canyon National Park Airport to the east and climb to 9,500, 11,500, or 13,500 feet MSL.

(i) When clear of the Desert View Overlook Flight-Free Zone, (Grand Canyon VOR 19 DME), turn north along the 19 DME arc to intercept the Colorado River. Follow the river to the north. *Or*

(ii) Enter the Zuni Point Corridor and proceed northbound. Intercept the Colorado River and follow the river to the north, remaining to the east of the river.

(5) *Westbound from Grand Canyon National Park Airport:* Proceed direct from Grand Canyon Airport to Pearce Ferry at 8,500, 10,500, or 12,500 feet MSL. Remain alert for commercial tour aircraft using the same route.

(6) *West canyon procedure:*

(i) *Eastbound leg.* Cross the Peach Springs VOR 308° radial eastbound 1 to 2 miles north of Pearce Ferry Airport (PSG VOR approximately 45 DME) at 6,000 feet MSL. Intercept and follow the Colorado River on a southeasterly heading. Remain south of the river at 6,000 feet MSL.

(ii) *Return/transition to enroute.* At Diamond Creek (between Peach Springs 025° to 030° radials), where the river turns to the north, comply with one of the following procedures:

Alternate 1. Begin climb to 6,500 feet MSL, turn left to cross the river and follow the river back to the west. Maintain 6,500 feet MSL.

Alternate 2. Begin climb to 9,500, 11,500, or 13,500 feet MSL and continue to follow the river to the north. East of the Shivwits Plateau, follow the main eastbound route described in paragraph (a)(2)(ii) of this section.

(7) Proceed through any of the five corridors and other areas outside of the flight-free zones at the following altitudes unless otherwise authorized by the Las Vegas Flight Standards District Office:

Route	Northbound	Southbound
Zuni Point, Fossil Canyon, and Tuckup Canyon Corridors.	9,500, 11,500, 13,500 feet MSL	10,500 or 12,500 feet MSL.
Shoshone Point Corridor	11,500 or 13,500 feet MSL	12,500 feet MSL.
Cocopa Point Corridor	11,500 or 13,500 feet MSL	10,500 or 12,500 feet MSL.
All other areas	9,500, 11,500, 13,500 feet MSL	10,500 or 12,500 feet MSL.

(b) Is authorized in writing by the Las Vegas Flight Standards District Office and is conducted in compliance with the conditions contained in that authorization. Normally authorization will be granted only for operations of aircraft necessary for law enforcement, firefighting, emergency medical treatment/evacuation of persons in the vicinity of the Park; for support of Park maintenance or activities; or for aerial access to and maintenance of other property located within the Special Flight Rules Area. Authorization may be issued on a continuing basis.

(c) Is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operator's Part 135 operations specifications and approved by the Las Vegas Flight Standards District Office. *Or*

(d) Is a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center.

Sec. 4. *Flight-free zones.* Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Las Vegas Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft in the Special Flight Rules Area within the following areas:

(a) *Desert View Flight Free Zone.* Within an area between the 14 DME arc and the 19 DME arc of the Grand Canyon (GCN) VOR, south of the GCN VOR 050° radial and north of the GCN VOR 062° radial. The area between the Desert View and Bright Angel/Shinumo Flight-Free Zones is designated the "Zuni Point Corridor."

(b) *Bright Angel/Shinumo Flight-Free Zone.* Within an area bounded on the south by the Grand Canyon (GCN) VOR 5 DME arc; on the east by the GCN VOR 072° radial to 10 DME, the 10 DME arc to the 040° radial, and the 040° radial to 18 DME; on the north by the GCN 18 DME arc to the GCN VOR 330° radial, the 330° radial to 25 DME, and the GCN VOR 25 DME arc to the GCN VOR 295° radial; and on the west by the 295° radial from 5 DME to 25 DME; but not including a corridor 2 miles either side of the GCN VOR 021° radial ("Shoshone Point Corridor"); and not including a corridor 2 miles either side of the Page (PGA) VOR 204° radial from the GCN VOR 295° radial at 10 DME (near Cocopa Point) to the GCN VOR 349° radial at 18 DME ("Cocopa Point Corridor").

(c) *Toroweap/Thunder River Flight Free Zone.* Within an area bounded on the north by the boundary of the Grand Canyon National Park from Timp Point (GCN VOR 325° radial at 28 DME) west to a point due east of Toroweap Airport; on the west by a line continuing due south to an arc defined by a 1.5-nautical-mile radius of Toroweap Overlook, and along that arc to the Colorado River; and on the south by the Colorado River east to the confluence of Havasu Canyon, and on a magnetic heading of 064° to the northern Park boundary at Timp Point; but not including a corridor 2 miles either side of the Peach Springs (PCN) VOR 025° radial ("Tuckup Canyon Corridor"). The area between the Thunder River/Toroweap and Bright Angel/Shinumo Flight Free Zones is designated the "Fossil Canyon Corridor."

Sec. 5. *Minimum flight altitudes.* Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Las Vegas Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft in the Special Flight Rules Area at an altitude lower than the following:

(a) Eastern section from Lees Ferry to Boundary Ridge: 6,000 feet MSL.

(b) Boundary Ridge to Supai (Yumitheska) Point: 7,500 feet MSL.

(c) Supai Point to Diamond Creek: 6,500 feet MSL.

(d) Western section from Diamond Creek to the Grand Wash Cliffs: 5,000 feet MSL.

Sec. 6. *Commercial sight seeing.*

(a) Nothwithstanding the provisions of Federal Aviation Regulations § 135.1(b)(2), nonstop sightseeing flights that begin and end at the same airport, are conducted within a 25 statute mile radius of that airport, and operate in or through the Special Flight Rules Area during any portion of the flight are governed by the provisions of Part 135.

(b) No person holding or required to hold an operating certificate under Part 135 may operate an aircraft in the Special Flight Rules Area except as authorized by operations specifications issued under that part.

Sec. 7. *Minimum terrain clearance.* Except in an emergency, when necessary for takeoff or landing, or unless authorized by the Las Vegas Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft within 500 feet of any terrain or structure located between the north and south rims of the Grand Canyon.

Sec. 8. *Communications.* Except when in contact with the Grand Canyon National Park Airport Traffic Control Tower during arrival or departure or on a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center, no person may operate an aircraft in the Special Flight Rules Area unless he monitors the appropriate frequency continuously while in that airspace.

Sec. 9. *Termination date.* This Special Federal Aviation Regulation expires on June 15, 1992.

(Authority: 49 U.S.C. 1303, 1348, 1354(a), 1421, and 1422; 16 U.S.C. 228g; Pub. L. 100-91, August 18, 1987; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)).

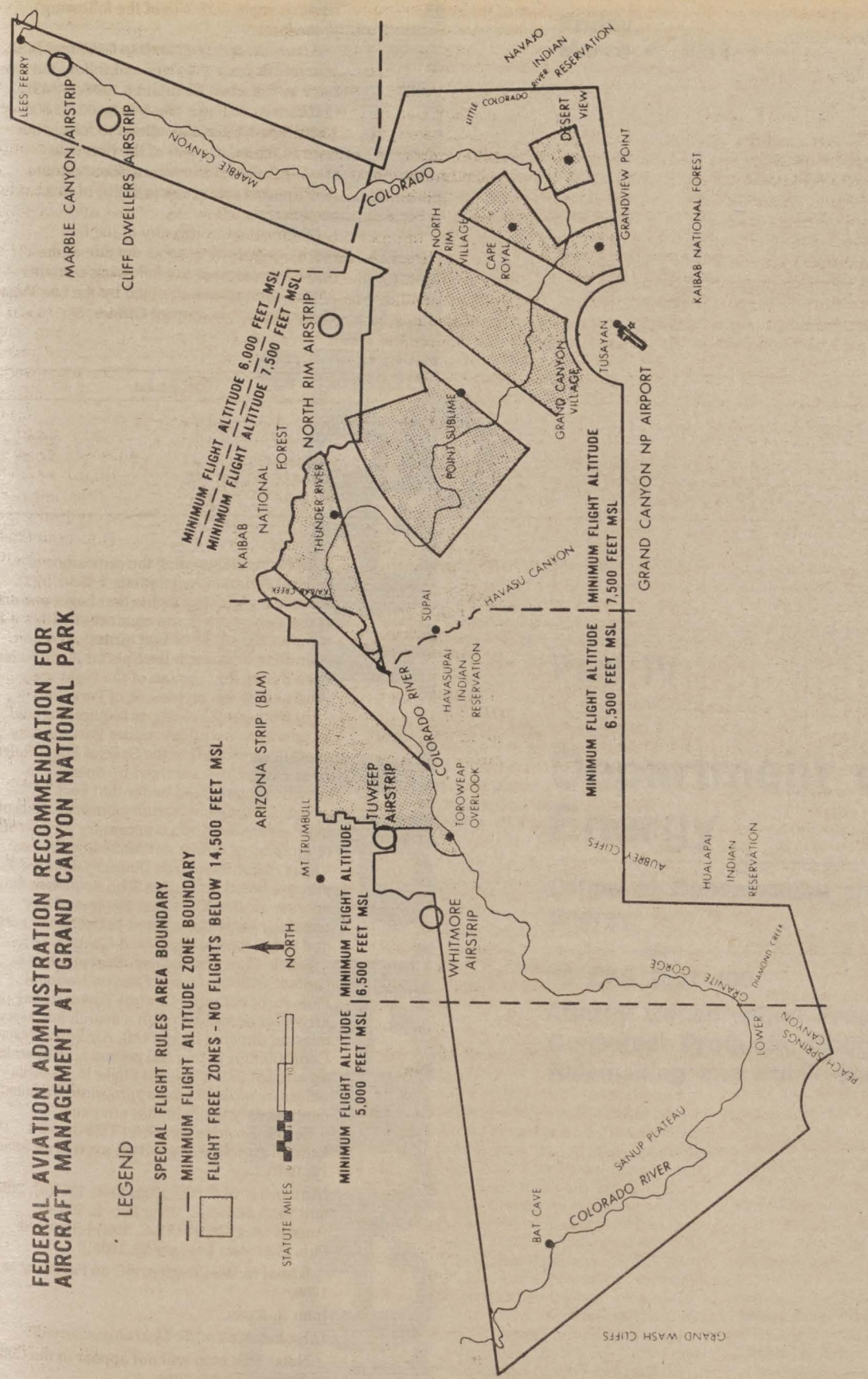
Issued in Washington, DC on February 29, 1988.

John R. Ryan,

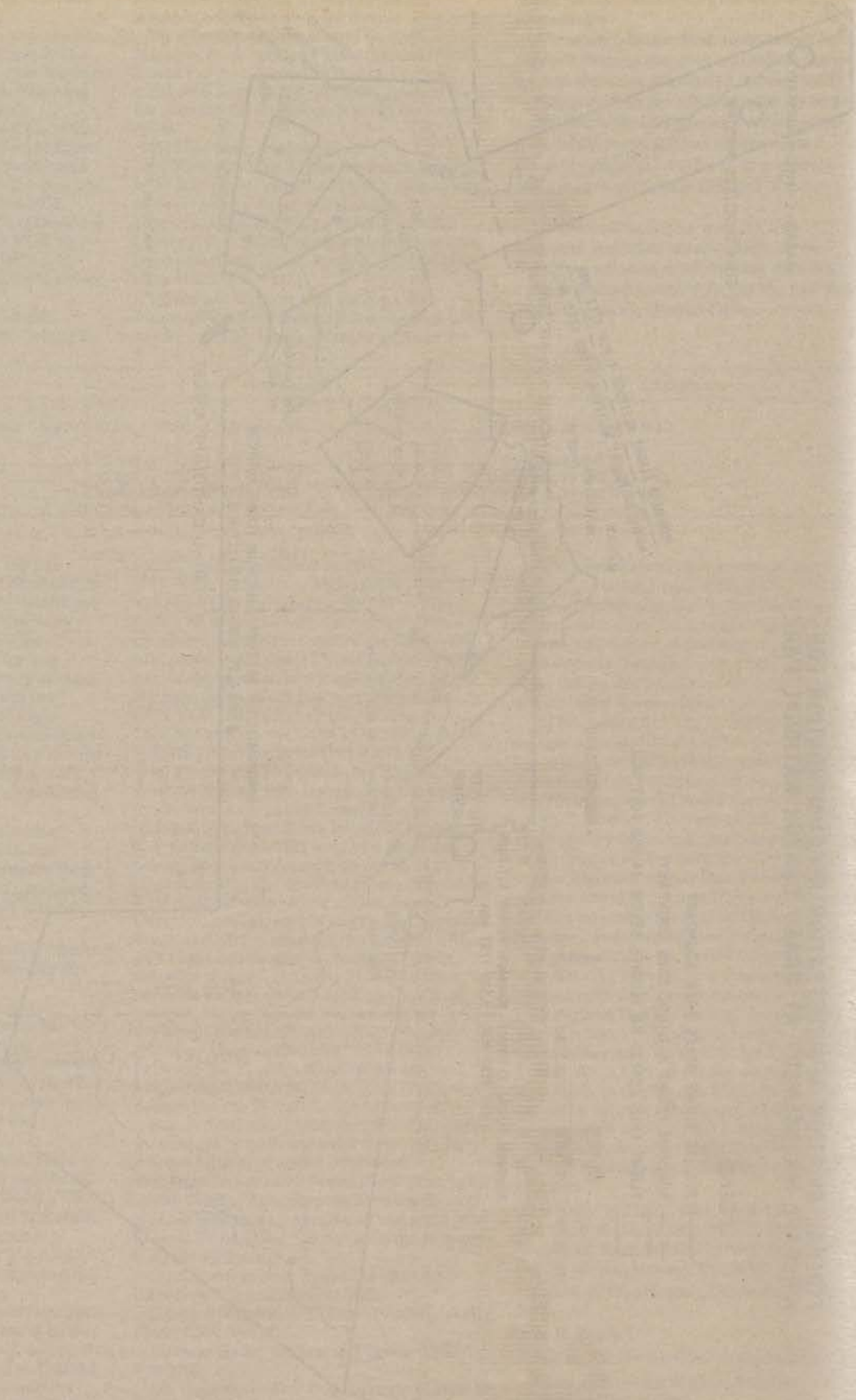
Director, Air Traffic Operations Service.

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

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Federal Register

Friday,
March 4, 1988

Part IV

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Notice of Proposed Rulemaking and Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products: Notice of Proposed Rulemaking and Public Hearing Regarding Regulations Related to Energy Conservation Standards for Consumer Products

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act and the National Appliance Energy Conservation Act, prescribes energy conservation standards for certain types of consumer products. As a general matter, these Federal standards preempt State and local standards and any other State and local requirements with respect to energy efficiency or energy use of these products.

The Department of Energy today is proposing to amend Title 10, Part 430 of the Code of Federal Regulations to include procedures for petitions that may be made by States and manufacturers with regard to Federal preemption of State and local energy conservation standards.

The proposed rule also would add procedures by which certain small businesses may obtain exemptions from the standards and procedures for certification and enforcement of the standards. The Department also is proposing the following: to clarify the basis for calculating the heating seasonal performance factor energy conservation standard prescribed by the Energy Policy and Conservation Act, as amended, for central air conditioners and heat pumps; to include an annual energy use measure for refrigerators, refrigerator-freezers and freezers; and to include sampling requirements for pool heaters.

The purpose of this notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule, and to invite interested persons to participate in the rulemaking process.

DATES: Written comments on the proposed rule must be received by the Department by May 3, 1988.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on April 12, 1988 at 9:30 a.m. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., April 8, 1988; speakers will be notified by 4:00 p.m., April 11, 1988.

Ten copies of the oral statement of each speaker must be submitted at the registration desk the day of the hearing.

ADDRESSES: The hearing will begin at 9:30 a.m., on April 12, 1988, and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, DC. The length of each presentation is limited to 20 minutes.

Written comments, statements, requests to speak at the hearing and requests for speakers lists are to be submitted to U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Conservation Program for Consumer Products, Docket No. CAS-RM-78-110, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020 between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

U.S. Department of Energy, CE-43.1 Room 6B-025, Docket No. CAS-RM-78-110, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9320.

SUPPLEMENTARY INFORMATION:

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b. Small Business Exemptions.
c. Certification and Enforcement.
d. Preemption of State Regulations.
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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, and by the National Applicance Energy Conservation Act (NAECA), Pub. L. 100-12,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. See section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and mandatory minimum energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Bureau of Standards, is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent

[1] Part B of Title III of EPCA as amended by NECPA and NAECA, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of EPCA as amended by NECPA only, is referred to in this notice as NECPA.

the energy consumption of, or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE procedure. Section 323(c)(2).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there is an FTC rule requiring labels under the Act for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, and refrigerators and refrigerator-freezers. 44 FR 66475, November 19, 1979. The FTC has proposed a rule to require labels for central air conditioners. 45 FR 53340. August 11, 1980.

For eleven of the covered products, the Act prescribes Federal energy conservation standards. Section 325(a)(1) and (b) through (h). The Act establishes initial effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product and specifies that the standards are to be reviewed by the Department within three to ten years, also depending on the product. Section 325(b) through (h). After the specified three-to ten-year period, DOE may promulgate new standards for each product, however, such standards may not be less stringent than those initially established by the Act. Section 325(l)(1).

The Act also directs DOE to prescribe an energy conservation standard no later than January 1, 1989, for small gas furnaces, i.e., gas furnaces having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992. Section 325(f)(1)(B).

With regard to another covered product, television sets, the Act allows the Department to prescribe an applicable standard; however such standard may not become effective before January 1, 1992. Section 325(i)(3).

The Act also permits the Department to prescribe standards for any other type of consumer product that, using certain criteria, DOE may classify as a covered product. Section 325(i), (l), and (m). Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(l)2)(A).

Section 325(l)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit views and comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burden, based, to the greatest extent practicable, by considering:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standards;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for National energy conservation; and

(7) Other factors the Secretary considers relevant. In addition, the Act specifies criteria for petitions to DOE in regard to amendments to standards. Section 325(k). Under the Act, any person may petition the Department to conduct a rulemaking to amend a Federal energy conservation standard for any covered product. Section 325(k)(l). The Department must grant such a petition if it determines that an amended standard will result in significant conservation of energy, is technologically feasible and is cost effective. Section 325(k)(2).

Sections 325(k)(3)(A) and (B) stipulate that in no case may an amended standard apply to product manufactured within three years or five years, depending on the product, after publication of the final rule establishing a standard. Furthermore, DOE may not prescribe an amended standard that is less stringent than that initially establishing by the Act. Section 325(1)(l).

Today's proposal does not include procedures and criteria for petitions for an amended standard. Since 1990 is the earliest date by which an amended standard could apply, DOE will address this issue in a future rulemaking proceeding.

Section 325(q) provides that manufacturers having annual gross revenues not exceeding $8 million may apply to DOE for an exemption from all or part of the requirements of an energy efficiency standard. This exemption may not extend beyond two years from the effective date of any standards requirement. This authority will not be exercised by DOE unless, after written consultation with the Attorney General, the Secretary finds that failure to allow the exemption would likely result in a lessening of competition.

Section 326 of the Act imposes requirements upon manufacturers to submit information or reports to assure that each covered product to which a standard applies meets the required energy efficiency level. DOE is proposing today certification provisions that include testing by the manufacturer and submission of compliance and certification data to DOE 45 days before the effective date of an applicable energy conservation standard. The Act also specifies that in determining information requirements, DOE consider existing sources of information, including nationally recognized trade association certification programs. Section 326(d).

Enforcement-related provisions of the Act provide for: (1) DOE to prescribe rules requiring manufacturers to allow the Department to observe testing and inspect results of testing conducted by the manufacturer [section 326(b)(5)]; (2) manufacturers to supply to DOE a reasonable number of products for testing purposes [section 326(b)(3)]; (3) manufacturers to submit information or reports necessary to ensure compliance [section 326(d)]; and (4) injunctive relief against any prohibited act, including distribution of noncomplying products [section 334].

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act. Section 327(a) through (c). Exceptions to this general rule include: (1) State standards prescribed or enacted before January 3, 1987, and applicable to products before January 3, 1988, may remain in effect until the applicable standard begins [section 327(b)(1)]; (2) state procurement

standards which are more stringent than the applicable Federal standard may remain in effect [section 327(b)(2) and (e)]; and certain building code requirements for new construction may remain in effect until the applicable standards begin, and, if certain criteria are met, the codes are exempt from Federal preemption [section 327(b)(3) and (f)(1) through (f)(4); State regulations banning constant burning pilot lights in pool heaters are exempt from Federal preemption; and State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product [section 327(b)(6) and 327(c)].

Another exception to Federal preemption concerns standards for refrigerators, refrigerator-freezers and freezers. The Act specifies that if DOE does not publish a final rule before January 1, 1990, relating to the revision of Federal standards for this product category, the standards for these products that have been promulgated by the State of California, and are to be effective January 1, 1992, may become effective beginning January 1, 1993, and may not be preempted by any Federal standard prescribed on or after January 1, 1990. Section 325(b)(3)(A)(ii)(I) and section 327(c).

In addition, if DOE does not publish a final rule before January 1, 1992, relating to the revision of standards for refrigerators, refrigerator-freezers and freezers, any State regulation which applies to such products manufactured on or after January 1, 1995, is exempt from Federal preemption until the effective date of a Federal standard. Section 325(b)(A)(ii)(II).

A State whose energy conservation standard is preempted may petition the Department for a rule that it not be preempted on the basis that the State regulation is needed to meet unusual and compelling State or local energy interests. Section 327(d). However, DOE cannot issue the requested rule if it is established that such State regulation will significantly burden marketing, manufacturing, distribution, sale or servicing of the covered products, or is likely to result in the unavailability in the State of any covered product with performance characteristics that are substantially the same as those generally available in the State at the time of DOE's determination. Section 327(d)(4).

The Act further provides that, except under certain energy emergency conditions, any State regulation for which exemption is granted shall apply to products manufactured three years after DOE publishes such a rule in the **Federal Register**, or five years after publication, if DOE finds that additional time is necessary for retooling and redesign. Section 327(d)(5).

b. Background

NECPA required DOE to establish mandatory energy efficiency standards for each of 13 covered products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

NECPA provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

NECPA specified the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products were given priority. These nine products were: refrigerators and refrigerator-freezers, freezers, clothes dryer, water heaters, room air conditioners, home heating equipment not including furnaces, kitchen ranges and ovens, and central air conditioners.

On June 30, 1980, DOE set forth its first proposed rulemaking for the nine products. 45 FR 43976. (Hereafter referred to as the June 1980 proposal). It also proposed comprehensive requirements for certification and enforcement of the standards as well as criteria and procedures for petitions from small businesses seeking temporary exemption from standards and by States seeking exemption for regulations subject to the general preemption requirements of NECPA.

On April 2, 1982, DOE published a further notice of proposed rulemaking with respect to the nine priority products. 47 FR 14424. (Hereafter referred to as the April 1982 proposal). Among other things, the April 1982 proposal included rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards, as well as by manufacturers to obtain preemption of State or local standards.

On December 22, 1982, DOE published a final rule that efficiency standards were not warranted for two covered products (clothes dryers and kitchen ranges and ovens) and that also prescribed final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption, and by which manufacturers might obtain preemption of a State or local standard not otherwise preempted. 47 FR 57198. (Hereafter referred to as the December 1982 final rule.)

On August 30, 1983, DOE published a final rule with respect to six additional covered products: refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376. (Hereafter referred to as the August 1983 final rule). For each of the six products covered by the August 1983 final rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in significant conservation of energy, but would not be economically justified.

On April 1, 1985, DOE published a proposed rule with respect to four covered products: dishwashers, television sets, clothes washers and humidifiers and dehumidifiers. 50 FR 12966. (Hereafter referred to as the 1985 proposal). For each of the four products covered by the 1985 proposal, DOE proposed that an energy efficiency standard would not be economically justified and would not result in a significant conservation of energy.

During 1983, DOE's December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department. On July 16, 1985, the U.S. Court of Appeals for the District of Columbia Circuit set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985).

Consequently, on March 5, 1986, DOE published notices in the **Federal Register** removing the December 1982 and August 1983 final rules and withdrawing the 1985 proposal. 51 FR 7549 and 51 FR 7582.

[2] The consumer products covered by NECPA included: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

II. Discussion

a. General Provisions

The NAECA amendments to NECPA included several definitions of terms which also are defined in 10 CFR Part 430. However, some of the definitions contained in the Act are inconsistent with those adopted by DOE regulation. Therefore, DOE intends to amend 10 CFR Part 430 by adopting the definitions contained in the Act. Since these definitions are established by law and are not subject to revisions, they have not been included in this proposed rule. The Department is including the definitions below as notice that they will be included in the final rule. The terms to be included in the final rule are as follows:

"Energy conservation standard" means:

(a) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a covered product, determined in accordance with test procedures prescribed under section 323; or

(b) A design requirement for the products specified in paragraphs (6), (7), (10), and (13) of section 322(a) of the Act; and includes any other requirements which the Secretary may prescribe under section 325(o) of the Act.

"Furnace" means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(a) Is designed to be the principal heating source for the living space of a residence;

(b) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(c) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(d) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

"Water heater" means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(a) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(b) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(c) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

Similarly, the NAECA amendments included terms which are not found currently in 10 CFR Part 430. DOE intends to adopt the legislated definitions in the final rule. The terms to be included in the final rule are as follows:

"Annual fuel utilization efficiency" means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 323 and based on the assumption that all—

(A) Weatherized warm air furnaces or boilers are located out-of-doors;

(B) Warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grill or ducts from the outdoors and does not communicate with air in the conditioned space;

(C) Boilers which are not weatherized are located within the heated space.

"Pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similiar applications.

"Weatherized warm air furnace or boiler" means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

Annual fuel utilization efficiency (AFUE) is determined in accordance with section 4.6 of Appendix N to Subpart B of Part 430. Because the current provisions for determining AFUE are not consistent with the legislated definition, DOE is today proposing amendments to section 4.6 of Appendix N which conform with the NAECA amendments. AFUE is based on the assumption that weatherized furnaces and boilers are located out-of-doors; that non-weatherized furnaces are located indoors and all combustion and ventilation air is admitted through grills or ducts from the outdoors and does not communicate with the air in the conditioned space; and that non-weatherized boilers are located indoors. These amendments will likely result in many non-weatherized (indoor) furnaces being rerated to reflect isolated combustion system values.

Within the definition of "heat pump," the Act includes an undefined term, packaged terminal heat pump, whereas, the term "packaged terminal air conditioner" found in the definition of central air conditioner is defined in section 430.2. The Act identifies both packaged terminal heat pumps and packaged terminal air conditioners as air conditioning products excluded from the standards program. Therefore, in order to clarify this exclusion with respect to packaged terminal heat pumps, DOE is proposing a definition for this product based upon the definition of packaged terminal air conditioner found in section 430.2.

The Act establishes standards for 11 types of appliances. Since these standards are established by law, they will be adopted without comment in an upcoming final rule. The energy conservation standards prescribed by the Act will be included in a final rule as follows:

Section 430.32 Federal Energy Conservation Standards.

The energy conservation standards for the covered product classes are:

(a) Refrigerators/refrigerator-freezers./freezers.

Product class	Energy standards equations Jan. 1, 1990.
1 Refrigerators and refrigerator-freezers with manual defrost.	16.3 AV + 316
2. Refrigerator - freezers - partial automatic defrost.	21.8 AV + 429
3. Refrigerator-freezers-automatic defrost with top-mounted freezer without ice.	23.5 AV + 471
4. Refrigerator-freezers-automatic defrost with side-mounted freezer without ice.	27.7 AV + 488
5. Refrigerator-Freezers-automatic defrost with bottom-mounted freezer without ice.	27.7 AV + 488
6. Refrigerator-freezers-automatic defrost with top-mounted freezer with through the door ice service.	26.4 AV + 535
7 Refrigerator-freezers-automatic defrost with side-mounted freezer with through the door ice.	30.9 AV + 547
8. Upright freezers with manual defrost.	10.9 AV + 422

Product class	Energy standards equations Jan. 1, 1990.
9. Upright freezers with automatic defrost.	16.0 AV + 623
10. Chest freezers and all other freezers.	14.8 AV + 223

AV=Total adjusted volume, expressed in $Ft.^3$

(b) Room air conditions.

Product class	Energy Efficiency Ratio Jan. 1, 1990
1 Without reverse cycle and with louvered sides less than 6,000 Btu	8.0
2. Without reverse cycle and with louvered sides 6,000 to 7,999 Btu	8.5
3. Without reverse cycle and with louvered sides 8,000 to 13,999 Btu	9.0
4. Without reverse cycle and with louvered sides 14,000 to 19,999 Btu	8.8
5. Without reverse cycle and with louvered sides 20,000 and more Btu	8.2
6. Without reverse cycle and without louvered sides Less than 6,000 Btu	8.0
7 Without reverse cycle and without louvered sides 6,000 to 7,999 Btu	8.5
8. Without reverse cycle and without louvered sides 8,000 to 13,999 Btu	8.5
9. Without reverse cycle and without louvered sides 14,000 to 19,999 Btu	8.5
10. Without reverse cycle and without louvered sides 20,000 and more Btu	8.2
11. With reverse cycle and with louvered sides	8.5
12. With reverse cycle and without louvered sides	8.0

(c) Central air conditioners and central air conditioning heat pumps.

Product class	Seasonal energy efficiency ratio	Heating seasonal performance factor	Effective date
1. Split Systems	10.0	6.8	01/01/92
2. Single Package Systems	9.7	6.6	01/01/93

(d) Water heaters.

Product class	Energy factor Jan. 1, 1990
1. Gas Water Heater	0.62 - (.0019 x Rated Storage Volume in gallons).
2. Oil Water Heater	0.59 - (.0019 x Rated Storage Volume in gallons).
3. Electric Water Heater.	0.95 - (.00132 x Rated Storage Volume in gallons).

(e) Furnaces.

Product class	Annual fuel utilization efficiency	Effective date
1. Furnaces (excluding classes noted below).	78%	01/01/92
2. Mobile Home Furnaces	75%	01/01/90
3. "Small" furnaces (input rate less than 45,000 Btu/hour.	[Reserved].	01/01/92
4. Boilers (excluding gas steam).	80%	01/01/92
5. Gas steam boilers	75%	01/01/92

(f) Dishwashers.

Dishwashers must be equiped with an option to dry without heat.

The standard was effective on January 1, 1988.

(g) Clothes washers.

Clothes washers must have an unheated water rinse option.

The standard was effective on January 1, 1988.

(h) Clothes dryers.

Constant burning pilot lights in gas clothes dryers are prohibited.

The standard was effective on January 1, 1988.

(i) Direct heating equipment.

Product class	Annual fuel utilization efficiency Jan. 1, 1990 (percent)
1. Gas wall fan type up to 42,000 Btu/hour	73
2. Gas wall fan type over 42,000 Bt/hour	74
3. Gas wall gravity type up to 10,000 Btu/hour	59
4. Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	60
5. Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	61
6. Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	62
7. Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	63
8. Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	64
9. Gas wall gravity type over 46,000 Btu/hour	65
10. Gas floor up to 37,000 Btu/hour	56
11. Gas floor over 37,000 Btu/hour	57
12. Gas room up to 18,000 Btu/hour	57
13. Gas room over 18,000 Btu/hour up to 20,000 Btu/hour	58
14. Gas room over 20,000 Btu/hour up to 27,000 Btu/hour	63
15. Gas room over 27,000 Btu/hour up to 46,000 Btu/hour	64
16. Gas room over 46,000 Btu/hour	65

(j) Kitchen ranges and ovens.

Gas kitchen ranges and ovens with an electrical supply cord shall not be equipped with a constant burning pilot.

The standard is effective on January 1, 1990.

(k) Pool heaters.

The thermal efficiency of pool heaters must be no less than 78%.

The standard is effective on January 1, 1990.

(l) Television sets. [Reserved]

In addition, DOE is today proposing the following: to amend Subpart C of Part 430 to incorporate the citation for Pub. L. 100–12 in the Authority section; to remove the term "energy efficiency standard" found in Subpart C and add in its place the term "energy conservation standard;" to revise section 430.33; and to delete section 430.34. Section 430.34, effective date, is proposed to be deleted because the effective date of a standard, as established by the Act, will be included in section 430.32, energy conservation standards.

The Act specifies a single value for the heating seasonal performance factor (HSPF) as the energy conservation standard for the heating mode of a heat pump. Section 325(d)(2) (A) and (B). The adoption of the HSPF energy conservation standard requires clarification as to the basis of the calculation. Subpart B of section 430.22(5)(ii) of DOE's regulations identifies the heating seasonal performance factors for air source heat pumps as the HSPF, in Btu's per watt-hour, determined according to section 5.2 of Appendix M to Subpart B for each applicable standardized design heating requirement within each climatic region. This would provide approximately 30 separate values of HSPF for each model. The Act provides only one value and does not specify which region and design heating requirement are to be the basis of the single number HSPF energy conservation standard.

The Department has reviewed the requirements of the Act and believes that the HSPF provided is based on Region IV and the standardized design heating requirement nearest the capacity measured in the high temperature (47 °F) test. For this reason, DOE proposes to include this as Part of the definition of HSPF in section 1.15 of Appendix M to Subpart B, Title 10 of the Code of Federal Regulations.

The current test procedures for refrigerators, refrigerator-freezers and freezers do not include a measure of annual energy consumption, only daily

energy use. Therefore, the Department also is proposing to include an annual energy use measure for refrigerators, refrigerator-freezers and freezers. As proposed, the annual energy use of refrigerators and refrigerator-freezers would equal the representative average use cycle of 365 cycles per year times the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix A1 of Subpart B. The equation for freezers would be the same, except, determined according to 6.2 of Appendix B1 of Subpart B.

Also, DOE is proposing to update the refrigerator, refrigerator-freezer and freezer test procedures by deleting Appendices A and B to Subpart B of Part 430.22 of the Code of Federal Regulations. The final rule establishing alternate test procedures for refrigerators and freezers provided a 3-year transition period, after which time only test procedure Appendices A1 and B1 could be used to rate refrigerators and freezers, respectively. 47 FR 34517, August 10, 1982. Since the transition period expired as of August 10, 1985, the Department is proposing to delete Appendices A and B from the Code of Federal Regulations. This proposal requires no comment, but rather serves as a reminder to refrigerator, refrigerator-freezer and freezer manufacturers that Appendices A and B, and all references to these Appendices contained in section 430.22, will be deleted.

To reflect the inclusion of pool heaters as a covered product, DOE is proposing to include test procedures and sampling requirements for this product. Due to the similarities in the design of pool heaters and furnaces, the sampling provisions proposed today for thermal efficiency are based on the furnace sampling requirements found at section 430.23(n) for furnace annual fuel utilization efficiency. DOE is not proposing sampling provisions for either annual operating cost or energy consumption because at this time the Department does not have the data necessary to make any determinations regarding pool heater usage patterns, including annual hours of use.

b. Small Business Exemptions

Pursuant to section 325(q) of the Act, DOE today is proposing a new Subpart E to establish procedures by which manufacturers, whose annual gross revenues for the preceding 12-month period do not exceed $8,000,000, may petition DOE for temporary exemption from all or part of an energy efficiency standard. The exemption may be granted for a period of up to 24 months from the date such standard is effective. In establishing eligibility for exemption, the annual gross revenues of any person who controls, is controlled by, or is under the common control with the petitioning manufacturer, are to be taken into account.

The purpose of this subpart is to enable small manufacturers who could not comply with the standards to continue operations for a period of up to two years.

DOE initially proposed regulations concerning small business exemptions in the June 1980 proposal. Many of the comments DOE received in response to that proposal asserted that the regulations would be overly burdensome. In today's proposal, DOE has significantly reduced the information and procedural requirements for such petitions. For example, the June 1980 proposal would have required the applicant to submit financial data for the three years preceding the application, whereas, DOE is now proposing such data only for the 12-month preceding the application.

In addition, today's proposal does not require the extensive information on design capabilities of a covered product or the substantive cost estimates required by June 1980 proposal.

The necessary relevant information that DOE proposes to require includes: (1) Information showing the applicant's annual gross revenue for the preceding 12-month period; (2) information showing that failure to grant an exemption is likely to result in a lessening of competition; and (3) any other information the applicant considers relevant or the Department may require.

Pursuant to section 325(q)(2) of the Act, DOE must obtain the written views of the Attorney General prior to granting or denying an exemption. The Department is proposing that its written order granting or denying an application set forth the relevant facts and legal basis of the determination and the order be sent to the applicant and any other person identified by DOE as interested in or aggrieved by such order. Under the proposal, the decision reached by DOE and the reasons therefor are to be published in the **Federal Register**.

c. Certification and Enforcement

The June 1980 proposal included a comprehensive Certification and Enforcement program in accordance with the provisions of NEPCA. In addition to stringent enforcement remedies, the purpose of this program was to ensure compliance with the proposed standard levels by prescribing substantial testing and reporting requirements by manufacturers at the time of certification. These certification requirements were authorized under sections 326 and 328 of NECPA, in which the Department specifically was allowed to require, through regulation, any information deemed appropriate to ascertain compliance with a standard. Considerable analysis, including analysis of various statistical techniques, was undertaken in developing the certification and enforcement methods contained in the June 1980 proposal. A detailed description of this analysis is included in the technical support document entitled "Certification/Enforcement Analysis," June 1980, DOE/CS-0170. Basically, the analysis quantified the relative merits of several certification and enforcement approaches.

A statistical certification procedure was proposed that minimized two possible reporting errors: (1) the possibility of not certifying a basic model that actually complies with the standard and (2) the possibility of certifying a basic model that actually does not comply with the standard.

As another means of ensuring compliance, the June 1980 proposal included provisions to require manufacturer retention of certification test units and test data. The proposal also would have required manufacturer submission of information designed to assist the government's enforcement efforts, e.g., production schedules, production volumes, basic model engineering information and critical component information.

In response to concerns expressed in the more than 1,200 comments to the June 1980 proposal, DOE undertook to revise substantially its certification and enforcement approach to lessen the reporting burden on the industry and to reduce the paperwork requirements. A discussion of these concerns and DOE's revision is included in Section F of the technical support document entitled "Consumer Products Efficiency Standards Engineering Analysis Document," March 1982, DOE/CE-0030. This document is available from DOE's Freedom of Information Reading Room, at the address provided at the beginning of this notice. This document reports that, as a result of the substantive issues raised DOE reduced its emphasis on the certification requirements. Specifically, DOE's revised position stated that certification testing in excess of what is required by the Federal Trade Commission should not be necessary, data retention requirements should be reduced and requirements for retention

of certification test units should be deleted.

Although DOE had already stated its support of reducing significantly the burden of certification procedures, the Act amended sections 325 and 326 to provide clear guidance to the Department concerning such requirements. Specifically, three amendments were included for the sole puposes of reducing the certification burden: (1) section 325 "Energy Conservation Standards" includes a new paragraph (p) which establishes that compliance will be determined using the test procedures and corresponding compliance criteria prescribed under section 323. (Such test procedures and corresponding compliance criteria prescribed by DOE appear in the Code of Federal Regulations at Title 10 Part 430, where the compliance criteria is entitled "430.23 Units to be tested."); (2) section 326(d) "Information Requirements" is revised to require the Department, when making any determination of information requirements, to consider existing public sources of information, including nationally recognized certification programs of trade associations; and (3) section 326(d) is further amended by adding subparagraph (2) which requires DOE to exercise its authority in a manner designed to minimize unnecessary burdens on manufacturers of covered products. DOE believes today's proposal complies with the certification amendments of the Act.

DOE is today proposing a Certification and Enforcement program that reflects both the guidance of the Act, and the recommendations received in response to the June 1980 proposal. The following summarizes today's proposal:

(1) Manufacturers, private labelers or their representatives determine compliance through minimal testing requirements (in the case of a design standard, no testing is required). Today's notice proposes that for the purpose of a certification of compliance, the determination of compliance shall be based upon the sampling procedures found in section 430.23. Since FTC has adopted the same sampling provisions for the appliance labeling rule found at 16 CFR Part 305, DOE believes that there will be little, if any, additional testing needed to demonstrate compliance with standards than that performed for the FTC labeling program. No test is required to determine compliance for the following products: clothes washers, clothes dryers and kitchen ranges and ovens for which prescriptive standards are set. Therefore, DOE believes that for these products, no additional testing, other than that performed for labeling and representations, will be required by DOE's certification rule as proposed today.

(2) A compliance statement and certification report are to be received prior to the effective date of an energy conservation standard and prior to the introduction of a new model thereafter. The information submission includes a compliance statement for all products and a certification report for model-specific energy performance information for those products which have an energy performance standard. For models covered by a FTC labeling program, the model-specific information is similar to that required by FTC for the labeling program.

For the following products: room air conditioners, central air conditioners and furnaces, the information proposed in today's notice is identical to that required by FTC. Accordingly, DOE would consider submittal of a copy of the FTC report as meeting the information requirements of today's proposal.

For the following products: refrigerators, refrigerator-freezers and freezers and water heaters (two FTC labeled products), NAECA bases its determination of compliance on annual consumption and adjusted volume, and energy factor and rated storage volume, respectively. The data submission to the FTC requires only annual operating cost and capacity. This information is not sufficient to demonstrate compliance with NAECA. For these products, the Department expects that manufacturers and private labelers or their representatives will include in their report to DOE annual consumption and adjusted volume, or energy factor and storage volume in addition to that information already provided to FTC. For example, the Gas Appliance Manufacturers Association (GAMA) report to FTC on behalf of water heater manufacturers already includes both annual cost of operation, the FTC requirement, and energy factor, the DOE standard value. Manufacturers should provide this information in addition to the FTC reports, and DOE considers this combined information as meeting the requirements of today's proposal.

For the following products: clothes washers, clothes dryers and kitchen ranges and ovens, NAECA prescribes a design standard. Accordingly, only a statement of compliance is necessary; no product specific information is required.

For the following products: direct heating equipment and pool heaters, products not required by FTC to be labeled but for which NAECA requires an energy performance standard, today's proposal requires, in addition to the compliance statement, product specific information of AFUE and thermal efficiency, respectively.

(3) Distribution is allowed of all timely certified compliant basic models.

(4) Upon receipt of credible and substantiated information concerning possible non-compliance, the Department will issue a test notice initiating enforcement procedures.

(5) DOE will conduct testing to allow for a statistically valid determination of compliance/noncompliance. The sampling plan proposed for enforcement testing is shown in Appendix A to subpart F of today's proposal. This sampling plan provides for testing a minimum of 4 units and a maximum of 20 to determine compliance/noncompliance. The larger sample size, larger than the sampling provisions found in § 430.23, reduces the likelihood of a manufacturer being found incorrectly in noncompliance. DOE had originally proposed a sampling plan for enforcement testing as part of the June 1980 proposed rule. Today's proposal reflects the comments received on that proposal. The revisions, including sample size, lower control limit and manufacturer optional testing eliminates almost any likelihood of error in determining manufacturer compliance. The proposed sampling plan for enforcement testing is a "double batch" sampling system. "Double batch" sampling is a sequential process in which additional testing is contingent upon previous test results. In the proposed sampling plan, a small sample is drawn initially, four units, and the units are tested. Following the first four tests, one of three decisions is made. First, a sample mean which, in statistical terms, "significantly above the standard" implies that the model is in compliance and testing is at an end. Second, a sample mean which, in statistical terms, "is significantly below the standard" implies that the model is not certified. Therefore, testing, by DOE order, is curtailed and the model is judged to be in noncompliance. Third, a sample mean, the results of which do not clearly indicate whether the model complies or not, is used to determine the second sample size. The variability of the units within the first sample and the specified tolerance limit provide some of the information necessary for determining a second sample size. DOE has determined the maximum second

sample size to be 16, for a total sample size of 20. DOE believes testing in excess of 20 units will not result in appreciable increased accuracy regarding the compliance/noncompliance determination.

Based on testing results including the second sample, one of two decisions may be made. First, a sample mean of all units tested which falls significantly below this energy conservation standard implies that the basic model has a mean energy performance which fails to comply with the standard. Therefore, the unit is in noncompliance. A sample mean above this level constitutes compliance.

The "double batch" sampling system provides a realistic approach to testing and minimizes "manufacturers risk" without unduly burdening the manufacturer or the Government.

(6) If compliance is determined, the manufacturer will be notified and distribution may continue. If noncompliance is determined, the manufacturer will be notified, and distribution in commerce is to cease. The requirement that a manufacturer cease distribution once DOE determines that a model is noncompliant is not expressly provided for by the Act. DOE is proposing this requirement in accordance with section 325(o) of the Act that provides that the Secretary may include any requirement which he determines is necessary to assure that each covered product meets the required energy performance standard. *See* section 430.71(a)(1).

(7) If DOE's determination of noncompliance is based on fewer than 20 units, the manufacturer may provide, at its expense, additional test units to be included into the overall sample, provided that the overall sample does not include more than 20 units. If the additional testing results in a compliance determination, an immediate notification is issued to allow distribution.

(8) If distribution of noncompliant basic model continues, DOE will seek a judicial order restraining further distribution. Also, at that time, the Department will determine the extent, if any, of civil penalties. *See* Section 430.73.

(9) Pursuant to sections 330 and 331 of the Act, DOE is today proposing that any product manufactured for export from the United States and that bears a label stating that such product is intended for export is exempt from the energy conservation standards and that any imported product that does not comply with the standards shall be refused entry into the United States under rules issued by the Secretary of the Treasury.

(10) Pursuant to the Act, DOE is today proposing to adopt the legislated provisions regarding prohibited acts found in section 332 of the Act and civil penalties found in section 333 of the Act. The Act provides for a civil penalty of not more than $100 for each violation.

(11) In accordance with sections 329, 333 and 334 of the Act, DOE is proposing to adopt the legislated provisions regarding the Department's authority to subpoena information; the remedies available to the Department if DOE determines that a basic model does not comply with an applicable energy conservation standard; and manufacturers' or private labelers' right to a hearing and appeal of an order issued by the Secretary.

(12) In accordance with section 328 of the Act, DOE is today proposing to adopt rules requiring a manufacturer or private labeler, upon receipt of written notification from the Secretary that a basic model is determined to be in noncompliance, to cease distribution of the basic model and to give written notification of the noncompliance to each person to whom the manufacturer has distributed the basic model.

d. Preemption of State Regulations

DOE is today proposing a new Subpart D of 10 CFR Part 430 to establish criteria and procedures by which States may petition the Department to be exempted from preemption, and by which manufacturers may petition DOE to withdraw an exemption. Previously, NECPA required that once a Federal standard was prescribed for any product, all State standards for such a product were preempted regardless of when the State standard was enacted. The Act amends section 327 so that State standards enacted before January 8, 1987, and which became effective before January 3, 1988, will remain effective until the appropriate Federal standard begins. Section 327 was also amended by the Act to exempt from Federal preemption certain building code requirements as well as State procurement standards, if such standards are more stringent than the corresponding Federal standards.

A new section 327(d) allows States to file petitions seeking exemption from Federal preemption and requires that a State must show that its regulation is needed to meet "unusual and compelling" State or local interests. Section 327(d)(1)(c) of the Act defines "unusual and compelling State or local interest" as interests which (1) are substantially different in nature or magnitude than those prevailing in the U.S. generally; and (2) are such that the costs, benefits, burdens, and reliability of energy savings resulting from the State standard make such standard preferable or necessary when compared to the costs, benefits, etc., of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State standard. The Act directs that the factors described in the latter clause are to be evaluated within the context of a State's energy plan and forecast.

In regard to information and data included in State petitions, DOE would welcome a discussion of the energy interests and needs of the State compared to those of the nation as a whole. For example: an estimate of the total energy savings, including peak savings, in the State for each covered product; an estimate of the total energy demand in the State compared to the total national demand for each of the next several years from the date of the petition; and estimate of the total energy usage in the State of the covered product for each of the next several years from the date of the petition; and an analysis of the usage patterns and the climate areas of the covered product.

This section also provides that even if the State has made a showing of an unusual or compelling interest, the Department may not grant the petition if interested persons have established by a preponderance of the evidence that the applicable State regulation will significantly burden marketing, manufacturing, distribution, sale, or servicing of the covered product on national basis, or is likely to result in the unavailability in the State of any covered product type of performance characteristics that are substantially the same as those generally available in the State at the time of the Department's determination.

Once a petition is granted, the new section 327(d) provides that any State regulation for which an exemption is granted shall apply to products manufactured three years after the rule granting such exemption is published in the **Federal Register**; however, the Secretary may lengthen the time to five years if he finds that additional time is necessary for retooling or redesign.

Generally, no exemption from Federal preemption may become effective for a covered product before the earliest effective date of the Federal standard for such product. However, an exemption may become effective before such date if, in addition to the general

criteria for exemption, the Department determines a State has shown that, within the State, an energy emergency exists which (1) imperils the health, safety and welfare of its citizens due to lack of adequate electricity or natural gas supplies at less than prohibitive costs; (2) cannot be substantially alleviated by importation of energy or use of interconnection agreements; and (3) the State standard is necessary to alleviate such a condition.

This section further provides that any person may file a petition requesting DOE to withdraw a rule issued with respect to a State's petition for exemption after a Federal energy conservation standard concerning such product has been amended by the Department. Under the Act, the Department is to consider such petitions in accordance with the requirements for State petitions, except that it is the responsibility of the petitioner to show that the rule received by the State should be withdrawn as a result of the amendment to the Federal standard.

These changes have been incorporated within the new rules proposed today. The Department is proposing procedures for States to petition for a rule that a State standard not be preempted and procedures for persons subject to such regulations to petition for withdrawal of such a rule. In order for the Department to make such determinations under the Act, today's proposal also includes the information to be submitted in such petitions.

III. Environmental, Regulatory Impact, Regulatory Flexibility and Paperwork Reduction Act Reviews

a. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

The Department is proposing to establish procedures implementing the Act's provisions for (1) certification and enforcement; (2) small business exemptions; and (3) petitions concerning exemption of State standards.

The Department believes the first element clearly would not be environmentally significant since it will not result in any environmental impacts.

For applications seeking a temporary small business exemption as well as for all petitions seeking exemption from Federal standards or supersession of State standards, DOE will conduct an appropriate National Environmental Policy Act (NEPA) review on a case-by-case basis.

The Department believes that the proposed action would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, and that neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

b. Regulatory Impact Review

DOE has concluded that the rule is not a "major rule" for purposes of Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on several factors. First, while the imposition of conservation standards will result in an increase in the cost of certain appliances, this increase will be offset by a reduction in energy costs. Second, the costs of complying with the testing requirements of the rule are not significant. For example, there would be no additional testing costs for labeled products, i.e., refrigerators, refrigerator-freezers, freezers, water heaters, furnaces and room air conditioners, since DOE proposes to accept the applicable testing requirements of the Federal Trade Commission. Likewise, there would be no testing costs for those products that have design standards, i.e., clothes washers dishwashers, and clothes dryers. Testing costs for central air conditioners also should be insignificant since a majority of these products already comply with trade associations' certification programs. With regard to pool heaters, while not a labeled product or covered by a trade association certification program, it is likely that testing already has been accomplished because of California's standard for this product. Finally, any impacts resulting from a conservation standard for television sets, will be addressed in a future rulemaking for this product. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the proposed rule was submitted to OMB for review without a regulatory impact analysis.

c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the proposal, if promulgated, will not have a "significant economic impact on a substantial number of small entities." To minimize potential impacts on small businesses which are appliance manufacturers, DOE is, in fact, proposing rules that would provide relief, in the form of temporary exemptions, from the applicable conservation standards.

In addition, as mentioned above, the Department will consider, as appropriate, any significant economic impact on small entities in deciding petitions to preserve or supersede State standards under section 327(d) of the Act.

d. Paperwork Reduction Act Review

This proposed rulemaking includes information collections that were previously cleared by the Department under OMB Control Number 1910–1400, expiring June 30, 1989.

IV. Public Comment Procedures

a. Participation in Rulemaking.

DOE encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers' associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 60 days following publication of this notice, for persons to comment on this proposal. Upon completion of the 60-day comment period, all comments and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures.

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "NAECA Regulations (Docket No. CAS-

RM–78–110)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and 10 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing.

1. Procedure for Submitting Requests to Speak. The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written or telephone request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "NAECA Regulations (Docket No. CAS–RM–78–110)," and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE by the date specified at the beginning of this notice.

Each person selected to be heard is requested to submit 10 copies of the oral statement to the registration desk prior to the beginning of the hearing. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing. DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 & 556 and section 336 of the Act. At the conclusion of all initial oral statements at the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who have made oral presentations, as well as Federal employees who have made written or oral presentations, relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, February 19, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Lists of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, and National Appliance Energy Conservation Act, (42 U.S.C. 6291–6309).

2. Section 430.1 is revised to read as follows:

§ 430.1 Purpose and scope.

This part establishes the regulations for the implementation of Part B of Title III (42 U.S.C. 6291–6309) of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by Pub. L. 94–385 and Pub. L. 100–12, which establishes an energy conservation program for consumer products other than automobiles.

3. Section 430.2 is amended by revising the present definition of "Act", deleting the definitions of "Administrator" and "Energy efficiency standard", and inserting the following definitions in alphabetical order:

§ 430.2 Definitions.

* * * * *

"Act" means the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) and by the National Appliance Energy Conservation Act (Pub. L. 100–12).

* * * * *

"Batch" means a collection of production units of a basic model from which a batch sample is selected.

"Batch sample" means the collection of units of the same basic model from which test units are selected.

"Batch sample size" means the number of units in a batch sample.

"Batch size" means the number of units in a batch.

* * * * *

"Packaged terminal heat pump" means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and may have supplementary heating availability by builder's choice of hot water, steam or electric resistance heat.

* * * * *

"Secretary" means the Secretary of the Department of Energy.

* * * * *

§ 430.22 [Amended]

4. Subpart B of Part 430 is amended by deleting Appendices A and B, and § 430.22 is amended by removing paragraphs (a)(6) and (b)(6); redesignating and revising paragraphs (a)(5) and (b)(5) as paragraphs (a)(6) and (b)(6) respectively; and adding new paragraphs (a)(5) and (b)(5) as follows:

(a) * * *

(5) The annual energy use of electric refrigerators and electric refrigerator-freezers equals the representative average use cycle of 365 cycles per year times the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix A1 of this subpart.

(6) Other useful measures of energy consumption for electric refrigerators and electric refrigerator-freezers shall be those measures of energy consumption for electric refrigerators and electric refrigerator-freezers which the Secretary determines are likely to assist consumers in making purchasing decisions which are derived from the application of Appendix A1 of this subpart.

(b) * * *

(5) The annual energy use of all freezers equals the representative average-use cycle of 365 cycles per year times the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix A1 of this subpart.

(6) Other useful measures of energy consumption for freezers shall be those measures of energy consumption for freezers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix B1 of this subpart.

* * * * *

5A. Subpart B of Part 430 is amended by deleting the word "(ALTERNATIVE)" in the headings to Appendices A1 and B1. 5B. Section 430.22 is amended by deleting the following references to Appendices A and B: "4.1 of Appendix A or" from paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(i)(B), (a)(4)(ii)(B); "4.2 of Appendix A or" from (a)(4)(i)(A), (a)(4)(ii)(A); "4.1 of Appendix B or" from (b)(1)(ii), (b)(2)(ii), (b)(3)(ii), (b)(4)(i)(B), (b)(4)(ii)(B); and "4.2 of Appendix B or" from (b)(4)(i)(A), (b)(4)(ii)(A).

* * * * *

§ 430.22 [Amended]

6. Section 430.22 is amended by adding new paragraph (p) as follows:

* * * * *

(p) *Pool heaters.* (1) The estimated annual operating cost (space reserved)

(2) The thermal efficiency of pool heaters, expressed as a percent, shall be determined in accordance with section 4 of Appendix P to this subpart.

7. Section 430.23 is amended by adding a new paragraph (p) to read as follows:

§ 430.23 Units to be tested.

* * * * *

(p)(1) For each basic model [1] of pool heater a sample of sufficient size shall be tested to insure that—

(i) (Reserved)

(ii) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of (A) the mean of the sample or (B) the lower 97½ percent confidence limit of the true mean divided by .95.

8. Subpart B of Part 430 is amended by adding a sentence to the end of section 1.15 of Appendix M as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring The Energy Consumption of Central Air Conditioners

* * * * *

1.15 * * * The single number HSPF energy conservation standard for central air conditioning heat pumps specified in section 325(d)(2) (A) and (B) is based on Region IV and the standardized DHR found in section 6 of this appendix, nearest the capacity measured in the 47 °F test.

* * * * *

9. Subpart B of Part 430 is amended by adding a new Appendix P as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring The Energy Consumption of Pool Heaters

1. *Test method.* The test method for testing gas- and oil-fired pool heaters shall be as specified in American National Standards Institute Standard for Gas-Fired Pool Heaters, Z21.56–1986.

2. *Test conditions.* Establish the test conditions specified in section 2.8 of ANSI Z21.56–1986.

3. *Measurements.* Measure the quantities delineated in section 2.8 of ANSI Z21.56–1986, except in the case of oil-fired heaters the measurement of energy consumption in Btu's is to be carried out in appropriate units, e.g., gallons.

4. *Calculations.* Calculate the thermal efficiency (expressed as a percent) as specified in section 2.8 of ANSI Z21.56–1986, except in the case of oil-fired heaters the expression of fuel consumption shall be in Btu's.

* * * * *

10. Subpart B of 430 is amended by revising section 4.6. of Appendix N as follows:

Appendix N to Subpart B of Part 430—Uniform Tests Method for Measuring the Energy Consumption of Furnaces

* * * * *

4.6 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) shall be expressed as a percent and defined as:

$$AFUE = \frac{5200 N_{ss} N_u Q_{IN}}{5200 N_{ss} Q_{IN} + 2.5(1+0.7)(4600) N_u Q_P}$$

where:

5200 = average annual heating degree-days

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

N_{ss} = as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as $N_{ss,wt}$ as defined in 4.5.14 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_{ss}$ as defined in 11.2.5 of ANSI/ASHRAE 103–82 for all other furnaces and boilers.

N_u = part load efficiency and is based on the assumption that all weatherized warm air furnaces or boilers are located out-of-doors; warm air furnaces which are not weatherized are installed as isolated combustion systems; and boilers which are not weatherized are installed in doors. Part load efficiency as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as $N_{u,wt}$ as defined in 4.5.1 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_{hc}$ as defined in 11.2.34 of ANSI/ASHRAE 103–82 and in 4.2 of this appendix for all other furnaces and boilers except that C_j and L_j are defined as:

0 for boilers which are not weatherized
3.3 for furnaces which are weatherized

C_j = 1.7 for furnaces which are not weatherized
4.7 for boilers which are weatherized

L_j = jacket loss and is either assigned the value of 1 percent or determined in accordance with 8.6 of ANSI/ASHRAE 103–82 in percent

Q_{IN} = steady-state heat input as defined in 11.2.34 of ANSI/ASHRAE 103–82

0.7 = average oversizing factor for furnaces and boilers

4600 = average non-heating season hours per year

Q_p = pilot flame fuel input rate as defined in 9.2 of ANSI/ASHRAE 103–82

11. Subpart B of Part 430 is amended by revising section 4.7 of Appendix N by changing "0 for furnaces or boilers intended to be installed indoors." to "0 for boilers which are not weatherized."; "1.7 for furnaces or boilers intended to be installed as isolated combustion systems." to "1.7 for furnaces which are not weatherized."; "3.3 for furnaces or boilers intended to be installed outdoors." to "3.3 for furnaces or boilers which are weatherized."; and "1.0 for finned tubed boilers intended for installation outdoors." to "1.0 for finned tubed boilers which are weatherized."

Subpart C of Part 430—[Amended]

12. Subpart C of Part 430 is revised by removing the words "energy efficiency standard(s)", and adding, in their place, the words "energy conservation standard(s)".

13. Subpart D of Part 430 is revised to read as follows:

Subpart D—Petitions To Exempt State Regulation From Preemption; Petitions to Withdraw Exemption of State Regulation

Sec.

430.40 Purpose and scope.
430.41 Prescriptions of a rule.
430.42 Filing requirements.
430.43 Notice of petition.
430.44 Consolidation.
430.45 Hearing.
430.46 Disposition of petitions.
430.47 Effective dates of final rules.
430.48 Request for reconsideration.
430.49 Finality of decision.

Authority: Sec. 327(d), Energy Policy and Conservation Act, Pub. L. 94–63 as amended by Pub. L. 95–619 and Pub. L. 100–12 (42 U.S.C. 6297).

§ 430.40 Purpose and scope.

(a) The regulations in this subpart prescribe the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered product not be preempted.

(b) The regulations in this subpart also prescribe the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered product.

§ 430.41 Prescriptions of a rule.

(a) Criteria for exemption from preemption. Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of a covered product for which a Federal energy conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of the evidence that such requirement is needed to meet unusual and compelling State or local energy interests. For the purposes of this regulation, the term "unusual and compelling State or local energy interests" means interests which are substantially different in nature or magnitude than those prevailing in the U.S. generally; and are such that when evaluated within the context of the State's energy plan and forecast, the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered product on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) Requirements of petition for exemption from preemption. A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(viii) below. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(b) *Criteria for exemption from preemption when energy emergency conditions exist within State.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of a covered product for which a Federal energy conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section, the State has established that: an energy emergency condition exists within the State that imperils the health, safety and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) Requirements of petition for exemption from preemption when energy emergency conditions exist within a State. A petition from a State for a rule for exemption from preemption when energy emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) A description of the energy emergency condition which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or the use of interconnection agreements;

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy conservation standard or other requirement for a type or class of a covered product, when the Federal energy conservation standard for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines the petitioner has shown the rule should be withdrawn.

(1) Requirements of petition to withdraw a rule exempting a State standard. A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

§ 430.42 Filing requirements.

(a) *Service.* All documents required to be served under this subpart shall, if mailed, be served by first class mail. Service upon a person's duly authorized representative shall constitute service upon that person.

(b) *Obligation to supply information.* A person or State submitting a petition is under a continuing obligation to provide any new or newly discovered information relevant to that petition. Such information includes, but is not limited to, information regarding any other petition or request for action subsequently submitted by that person or State.

(c) *The same or related matters.* A person or State submitting a petition or other request for action shall state whether to the best knowledge of that petitioner the same or related issue, act, or transaction has been or presently is being considered or investigated by any State agency, department, or instrumentality.

(d) *Computation of time.* (1) Computing any period of time prescribed by or allowed under this subpart, the day of the action from which the designated period of time begins to run is not to be included. If the last day of the period is Saturday, or Sunday, or Federal legal holiday, the period runs until the end of the next day that is neither a Saturday, or Sunday or Federal legal holiday.

(2) Saturdays, Sundays, and intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(3) When a submission is required to be made within a prescribed time, DOE may grant an extension of time upon good cause shown.

(4) Documents received after regular business hours are deemed to have been submitted on the next regular business day. Regular business hours for the DOE's National Office, Washington, DC, are 8:30 a.m. to 4:30 p.m.

(5) DOE reserves the right to refuse to accept, and not to consider, untimely submissions.

(e) *Filing of petitions.* (1) A petition for a rule shall be submitted in triplicate to: The Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy, Section 327 Petitions, Appliance Efficiency Standards, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

(2) A petition may be submitted on behalf of more than one person. A joint petition shall indicate each person participating in the submission. A joint petition shall provide the information required by § 430.41 for each person on whose behalf the petition is submitted.

(3) All petitions shall be signed by the person(s) submitting the petition or by a duly authorized representative. If submitted by a duly authorized

representative, the petition shall certify this authorization.

(4) A petition for a rule to withdraw a rule exempting a State regulation, all supporting documents, and all future submissions shall be served on each State agency, department, or instrumentality whose regulation the petitioner seeks to supersede. The petition shall contain a certification of this service which states the name and mailing address of the served parties, and the date of service.

(f) *Acceptance for filing.* (1) Within fifteen (15) days of the receipt of a petition, the Secretary will either accept it for filing or reject it, and the petitioner will be so notified in writing. The Secretary will serve a copy of this notification on each other party served by the petitioner. Only such petitions which conform to the requirements of this subpart and which contain sufficient information for the purposes of a substantive decision will be accept for filing. Petitions which do not so conform will be rejected and an explanation provided to petitioner in writing.

(2) For purposes of the Act and this subpart, a petition is deemed to be filed on the date it is accepted for filing.

(g) *Docket.* A petition accepted for filing will be assigned an appropriate docket designation. Petitioner shall use the docket designation in all subsequent submissions.

§ 430.43 Notice of petition.

(a) Promptly after receipt of a petition and its acceptance for filing, notice of such petition shall be published in the **Federal Register**. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination of the petition. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the **Federal Register**.

(b) In addition to the material required under paragraph (a) of this section, each notice shall contain a summary of the State regulation at issue and the petitioner's reasons for the rule sought.

§ 430.44 Consolidation.

DOE may consolidate any or all matters at issue in two or more proceedings docketed where there exist common parties, common questions of fact and law, and where such consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 430.45 Hearing.

The Secretary may hold a public hearing, and publish notice in the **Federal Register** of the date and location of the hearing, when he determines that such a hearing is necessary and likely to result in a timely and effective resolution of the issues. A transcript shall be kept of any such hearing.

§ 430.46 Disposition of petitions.

(a) After the submission of public comments under § 430.42(a), the Secretary shall prescribe a final rule or deny the petition within 6 months after the date the petition is filed.

(b) The final rule issued by the Secretary or a determination by the Secretary to deny the petition shall include a written statement setting forth his findings and conclusions, and the reasons and basis therefor. A copy of the Secretary's decision shall be sent to the petitioner and the affected State agency. The Secretary shall publish in the **Federal Register** a notice of the final rule granting or denying the petition and the reasons and basis therefor.

(c) If the Secretary finds that he cannot issue a final rule within the 6-month period pursuant to paragraph (a) of this section, he shall publish a notice in the **Federal Register** extending such period to a date certain, but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for the delay.

§ 430.47 Effective dates of final rules.

(a) A final rule exempting a State standard from Federal preemption will be effective:

(1) Upon publication in the **Federal Register** if the Secretary determines that such rule is needed to meet an "energy emergency condition" within the State.

(2) Three years after such rule is published in the **Federal Register**; or

(3) Five years after such rule is published in the **Federal Register** if the Secretary determines that such additional time is necessary due to the burdens of retooling, redesign or distribution.

(b) A final rule withdrawing a rule exempting a State standard will be effective upon publication in the **Federal Register**.

§ 430.48 Request for reconsideration.

(a) Any petitioner whose petition for a rule has been denied may request reconsideration within 30 days of denial. The request shall contain a statement of facts and reasons supporting reconsideration and shall be submitted in writing to the Secretary.

(b) The denial of a petition will be reconsidered only where it is alleged and demonstrated that the denial was based on error in law or fact and that evidence of the error is found in the record of the proceedings.

(c) If the Secretary fails to take action on the request for reconsideration within 30 days, the request is deemed denied, and the petitioner may seek such judicial review as may be appropriate and available.

(d) A petitioner has not exhausted other administrative remedies until a request for reconsideration has been filed and acted upon or deemed denied.

§ 430.49 Finality of decision.

(a) A decision to prescribe a rule that a State energy conservation standard or other requirement not be preempted is final on the date the rule is issued, i.e., signed by the Secretary. A decision to prescribe such a rule has no effect on other regulations of a covered product of any other State.

(b) A decision to prescribe a rule withdrawing a rule exempting a State standard or other requirement is final on the date the rule is issued, i.e., signed by the Secretary. A decision to deny such a petition is final on the day a denial of a request for reconsideration is issued, i.e., signed by the Secretary.

14. Part 430 is amended by adding a new Subpart E, to read as follows:

Subpart E—Small Business Exemptions

Sec.

430.50 Purpose and scope.
430.51 Eligibility.
430.52 Requirements for applications.
430.53 Processing of applications.
430.54 Referral to the Attorney General.
530.55 Evaluation of the application.
530.56 Decision and order.
430.57 Duration of temporary exemption.

Authority: Sec. 325(q), Energy Policy and Conservation Act, Pub. L. 94–163 as amended by Pub. L. 95–619 and Pub. L. 100–12 (42 U.S.C. 6295).

Subpart E—Small Business Exemptions

§ 430.50 Purpose and scope.

(a) This subpart establishes procedures for the submission and disposition of applications filed by manufacturers of covered consumer products with annual gross revenues that do not exceed $8 million to exempt them temporarily from all or part of energy conservation standards established by this part.

(b) The purpose of this subpart is to provide content and format requirements for manufacturers of

covered consumer products with low annual gross revenues who desire to apply for temporary exemptions from applicable energy conservation standards.

§ 430.51 Eligibility.

Any manufacturer of a covered product with annual gross revenues that do not exceed $8,000,000 from all its operations (including the manufacture and sale of covered products) for the 12-month period preceding the date of application may apply for an exemption. In determining the annual gross revenues of any manufacturer under this subpart, the annual gross revenue of any other person who controls, is controlled by, or is under common control with, such manufacturer shall be taken into account.

§ 430.52 Requirements for applications.

(a) Each application filed under this subpart shall be submitted in triplicate to:

U.S. Department of Energy, Small Business Exemptions, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

(b) An application shall be in writing and shall include the following:

(1) Name and mailing address of applicant;

(2) Whether the applicant controls, is controlled by, or is under common control with another manufacturer, and if so, the nature of that control relationship;

(3) The text or substance of the standard or portion thereof for which the exemption is sought and the length of time desired for the exemption;

(4) Information showing the annual gross revenue of the applicant for the preceding 12-month period from all of its operations (including the manufacture and sale of covered products);

(5) Information to show that failure to grant an exemption is likely to result in a lessening of competition;

(6) Such other information, if any, believed to be pertinent by the petitioner; and

(7) Such other information as the Secretary may require.

§ 430.53 Processing of applications.

(a) The applicant shall serve a copy of the application, all supporting documents, and all subsequent submissions, or a copy from which confidential information has been deleted pursuant to 10 CFR 1004.11, to the Secretary, which may be made available for public review.

(b) The Secretary on his own initiative may convene a hearing if, in his discretion, he considers such hearing will advance his evaluation of the application.

§ 430.54 Referral to the Attorney General.

Notice of the application for exemption under this subpart shall be transmitted to the Attorney General by the Secretary and shall contain (a) a statement of the facts and of the reasons for the exemption, and (b) copies of all documents submitted.

§ 430.55 Evaluation of the application.

The Secretary shall grant an application for exemption submitted under this subpart if the Secretary finds, after obtaining the written views of the Attorney General, that a failure to allow an exemption would likely result in a lessening of competition.

§ 430.56 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained, the Secretary shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order.

(c) The Secretary shall serve a copy of the order upon the applicant and upon any other person readily identifiable by the Secretary as one who is interested in or aggrieved by such order. The Secretary also shall publish in the **Federal Register** a notice of the grant or denial of the order and the reason therefor.

§ 430.57 Duration of temporary exemption.

A temporary exemption terminates according to its terms but not later than twenty-four months after the effective date of the rule for which the exemption is allowed.

15. Subpart F of Part 430 is amended by adding a new Subpart F to read as follows:

Subpart F—Certification and Enforcement

Sec.

430.60 Purpose and scope.
430.61 Prohibited acts.
430.62 Submission of data.
430.63 Sampling.
430.64 Imported products.
430.65 Exported products.
430.70 Enforcement.
430.71 Cessation of distribution of a basic model.
430.72 Subpoena.
430.73 Remedies.
430.74 Hearings and Appeals.
430.75 Confidentiality.

Appendix A to Subpart F of Part 430—Compliance Statement.

Appendix B to Subpart F of Part 430—Sampling Plan for Enforcement Testing.

Authority: Secs. 325, 326, 328, 329, 330, 331, 332, 333, and 334, Energy Policy and Conservation Act, Pub. L. 94–163, as amended by Pub. L. 95–619 and Pub. L. 100–12 (42 U.S.C. 6295, 6296, 6298, 6299, 6300, 6301, 6302, 6303, and 6304).

§ 430.60 Purpose and scope.

The regulations in this subpart set forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy conservation standard set forth in Subpart C of this Part. Energy conservation standards include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards) and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 Prohibited acts.

(a) Each of the following is a prohibited act pursuant to section 332 of the Act:

(1) Failure to permit access to, or copying of records required to be supplied under the Act and this rule or failure to make reports or provide other information required to be supplied under the Act and this rule;

(2) Failure of a manufacturer to supply at his expense a reasonable number of covered products to a test laboratory designated by the Secretary;

(3) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this rule and inspect the results of such testing; and

(4) Distribution in commerce by a manufacturer or private labeler of any new covered product which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this rule.

(b) In accordance with section 333 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $100 for each violation. Each violation of paragraph (a) of this section shall constitute a separate violation with respect to each covered product, and each day of noncompliance with items (1) through (3) of paragraph (a) shall constitute a separate violation.

§ 430.62 Submission of data.

(a) *Compliance statement and certification report.* Each manufacturer or private labeler before distributing in

commerce any basic model of a covered product subject to the applicable energy conservation standard set forth in Subpart C of this Part shall certify by means of a statement of compliance and certification report, that each basic model meets the requirements of that standard.

(1) The compliance statement shall include:

(i) The basic model(s) comply with the applicable energy conservation standards;

(ii) All required testing on which the compliance statement is based was conducted in conformance with the applicable test requirements prescribed in 10 CFR Part 430 Subpart B and this subpart and all test data are reported in accordance with this subpart;

(iii) All information reported in the compliance statement is true, accurate, and complete; and

(iv) The manufacturer (private labeler) is aware of the penalties associated with violations of the Act and the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government. The format for a compliance statement is set forth in Appendix A.

(2) For each basic model the certification report shall include the annual energy use and adjusted volume (for refrigerators, refrigerator-freezers and freezers), energy factor and rated storage volume (for water heaters), the energy efficiency ratio (for room air conditioners), seasonal energy efficiency ratio heating seasonal performance factor (for central air conditioners and central air conditioning heat pumps), thermal efficiency (for pool heaters), and annual fuel utilization efficiency (for furnaces and direct heating equipment) the model numbers for each model; and its capacity.

(3) Copies of reports to the Federal Trade Commission which include the information in paragraph(a)(2) of this section meet the requirements of this paragraph.

(b) *Reporting requirements.* All data required by § 430.62(a) shall be submitted on or before the following dates and prior to the introduction of a new model thereafter.

Products	Date
Refrigerators, Refrigerator-Freezers and Freezers.	Aug. 1, 1989.
Room Air Conditioners	May 1, 1989.
Central Air Conditioners and Central Air Conditioning Heat Pumps.	July 1, 1991
Water Heaters	May 1, 1989.
Furnaces	May 1, 1991.
Dishwashers	(60 days after publication of final rule)
Clothes Washers	(60 days after publication of final rule)
Clothes Dryers	(60 days after publication of final rule)
Direct Heating Equipment.	Sept. 1, 1989.
Kitchen Ranges and Ovens.	Sept. 1, 1989.
Pool Heaters	Nov. 1, 1989.

For each basic model of a covered product to be distributed in commerce, each manufacturer and private labeler or his representative shall file a compliance statement and certification report, by certified mail, to Department of Energy, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

(c) *New models.* All information required by paragraph (b) of this section must be submitted for new models prior to any distribution of such model. Any change to a basic model which affects energy consumption may constitute the addition of a new basic model subject to the requirements of § 430.61. If such change does not alter compliance with the applicable energy conservation standard for the basic model, the new model shall be considered certified. Models which are discontinued shall be reported in the next annual report.

(d) *Maintenance of records.* (1) The manufacturer of any covered product subject to any of the energy performance standards or procedures prescribed in this part, shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review. The records should include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart (except tests performed by DOE directly).

(2) All such records shall be retained by the manufacturer for a period of two years from the date that production of the applicable model has ceased. Records shall be retained in a form allowing ready access to DOE upon request.

(e) *Third party representation.* If a manufacturer or private labeler elects to use a third party, e.g., trade association or other authorized representative, to submit the certification report, the certification report shall include all the information identified in paragraph (a) of this section, including the compliance statement.

§ 430.63 Sampling.

(a) For purposes of a certification of compliance, the determination that a basic model complies with the applicable energy performance standard shall be based upon the sampling procedures set forth in § 430.23 of this Part. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based upon the incorporation of specific design requirements for clothes dryers, dishwashers, clothes washers and kitchen ranges and ovens specified in section 325 of the Act.

(b) A basic model which meets the following requirements may qualify as an "other than tested model" for purposes of the certification testing and sampling requirements:

(1) Central air conditioners: The condenser-evaporator coil combinations manufactured by the condensing unit manufacturer other than the combination likely to have the largest volume of retail sales or the condenser-coil combinations manufactured in part by a component manufacturer using the same condensing unit.

(2) For purposes of certification of "other than tested models," as defined in paragraph (b)(1) of this section, a manufacturer may certify the basic model on the basis of computer simulation or engineering analysis as set forth in § 430.62(m) of Subpart B.

§ 430.64 Imported products.

(a) Pursuant to section 331 of the Act, any person importing any covered product into the United States shall comply with the provisions of the Act and of this Part, and is subject to the remedies of this Part.

(b) Any covered product offered for importation in violation of the Act and of this Part shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered product will not violate the Act and this Part, or will be exported or abandoned to the United States.

§ 430.65 Exported products.

Pursuant to Section 330 of the Act, this part shall not apply to any covered

product if (a) such covered product is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such product is, in fact, distributed in commerce for use in the United States, and (b) such covered product, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered product is intended for export.

§ 430.70 Enforcement.

(a) *Performance standard.*—(1) *Test notice.* Upon receiving information concerning the energy performance of a particular covered product sold by a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy performance standard, the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

(i) Such a procedure will only be followed after the Secretary or his designated representative has examined the underlying test data provided by the manufacturer and after the manufacturer has been offered the opportunity to verify the compliance with the applicable performance standard. A representative designated by the Secretary shall be permitted to observe any reverification procedures by this subpart, and to inspect the results of such reverification.

(ii) The test notice will be signed by the Secretary or his designee. The test notice will be mailed or delivered by DOE to the plant manager or other responsible official, as designated by the manufacturer.

(iii) The test notice will specify the model or basic model to be selected for testing, the method of selecting the test sample, the time at which testing shall be initiated, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and may include alternative basic models.

(iv) The Secretary may require in the test notice that the manufacturer of a covered product shall ship at his expense a reasonable number of units of a basic model specified in such test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed twenty (20).

(v) Within 5 working days of the time units are selected, the manufacturer shall ship the specified test units of a basic model to the testing laboratory.

(2) *Testing laboratory.* Whenever DOE conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. Such test data will be used by DOE to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of Appendix B of this subpart.

(3) *Sampling.* The determination that a manufacturer's basic model complies with the applicable energy performance standard shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in Appendix B of this subpart and the test procedures set forth in Subpart B of this Part.

(4) *Test unit selection.* A DOE inspector shall select a batch, a batch sample, and test units from the batch sample in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(i) The batch may be subdivided by DOE utilizing criteria specified in the test notice, e.g., date of manufacture, component-supplier, location of manufacturing facility, or other criteria which may differentiate one unit from another within a basis model.

(ii) A batch sample of up to 20 units will then be randomly selected from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until such time as the basic model is determined to be in compliance or noncompliance.

(iii) Individual test units comprising the test sample shall be randomly selected from the batch sample.

(iv) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(5) *Test unit preparation.*

(i) Prior to and during testing, a test unit selected in accordance with paragraph (a)(4) of this section of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in Subpart B.

(ii) No quality control, testing or assembly procedures shall be performed on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(6) *Testing at manufacturer's option.*

(i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard at the conclusion of DOE testing in accordance with the double sampling plan specified in Appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in Appendix B of this subpart.

(ii) All units tested under paragraph (a)(6) of this section shall be selected and tested in accordance with the provisions given in paragraphs (a) (1) through (5) of this section.

(iii) The manufacturer shall bear the cost of all testing conducted under paragraph (a)(6) of this section.

(iv) The manufacturer shall cease distribution of the basic model being tested under the provisions of paragraph (a)(6) of this section from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. DOE may seek civil penalties for all units distributed during such period.

(v) If the additional testing results in a determination of compliance, a notice of allowance to resume distribution shall be issued by the Department.

(b) *Design standard.* In the case of a design standard a model is determined noncompliant by DOE after the Secretary or his designated representative has examined the underlying design information provided by the manufacturer and after the manufacturer has been offered the opportunity to verify compliance with the applicable design standard.

§ 430.71 Cessation of distribution of a basic model.

(a) In the event that a model is determined noncompliant by DOE in accordance with § 430.70 or if a manufacturer or private labeler determines a model to be in noncompliance, then the manufacturer or private labeler shall:

(1) Immediately cease distribution in commerce of the basic model;

(2) Give immediate written notification of the determination of noncompliance, to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance.

(3) Pursuant to a request made by the Secretary, provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(4) The manufacturer may modify the noncomplaint basic model in such manner as to make it comply with the applicable performance standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this subpart; except that in addition satisfying all requirements of this subpart, the manufacturer shall also maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

(b) If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

§ 430.72 Subpoena.

Pursuant to section 329(a) of the Act, for purposes of carrying out this Part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served, upon any persons subject to this Part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

§ 430.73 Remedies.

If DOE determines that a basic model of a covered product does not comply with an applicable energy conservation standard:

(a) DOE will notify the manufacturer, private labeler or any other person as required, of this finding and of the Secretary's intent to seek a judicial order restraining further distribution in commerce of such basic model unless the manufacturer, private labeler or any other person as required, delivers to DOE within 15 calendar days a statement, satisfactory to DOE, of the steps he will take to insure that the noncompliant model will no longer be distributed in commerce. DOE will monitor the implementation of such statement.

(b) If the manufacturer, private labeler or any other person as required, fails to stop distribution of the noncompliant model, the Secretary may seek to restrain such violation in accordance with section 334 of the Act.

(c) The Secretary shall determine whether the facts of the case warrant the assessment of civil penalties for knowing violations in accordance with section 333 of the Act.

§ 430.74 Hearings and Appeals.

(a) Pursuant to section 333(d) of the Act, before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of that person's opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (c) of this section (in lieu of those paragraph (b) of this section) apply with respect to such assessment.

(b)(1) Unless an election is made within 30 calendar days after receipt of notice under paragraph (a) of this section to have paragraph (c) of this section apply with respect to such penalty, the Secretary shall assess the penalty, by order after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of Title 5, United States Code, before an administrative law judge appointed under section 3105 of such Title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days the date of the order of the Secretary assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(c)(1) In the case of any civil penalty with respect to which the procedures of this section have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (a) of this section of the proposed penalty.

(2) If the civil penalty has not been paid within 60 calendar days after the assessment has been made under paragraph (c)(1) of this section, the Secretary shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(d) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (b) of this section, or after the appropriate District Court has entered final judgment in favor of the Secretary under paragraph (c) of this section, the Secretary shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(e)(1) In accordance with the provisions of section 333(d)(5)(A) of the Act and notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys within DOE designated by the Secretary) who shall supervise, conduct, and argue civil litigation to which paragraph (c) of this section applies including any related collection action under paragraph (d) of this section in a court of the United States or in any other court, except the Supreme Court of the United States. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) In accordance with the provisions of section 333(d)(5)(B) of the Act, and subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (e)(1) of this section.

(3) In accordance with the provisions of section 333(d)(5)(C) of the Act, section 402(d) of the Department of Energy Organization Act shall not apply with respect to the function of the Secretary under this section.

§ 430.75 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt law from public disclosure should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

Appendix A to Subpart F of Part 430—Compliance Statement

[OMB Control No. 1910–1400]

Statement of Compliance with Energy Conservation Standards for Appliances.

Product: _____

Model Nos.: _____

Manufacturer's Name and Address.

_____

_____

_____

_____

Date: _____

Submit by Certified Mail to: Department of Energy, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

This report is submitted pursuant to Part 430 (Energy Conservation Program for Consumer Products) of the Energy Policy and Conservation Act (Pub. L. 94–163, and amendments thereto. The basic model(s) included in this report complies (comply) with the applicable energy conservation standard. All testing were appropriate, on which this certification report is based, was conducted in conformance with the applicable test requirements prescribed in Subpart B of 10 CFR Part 430. All information reported in this certification report is true, accurate, and complete. I am aware of the penalties associated with violations of the Act and the regulations thereunder, and am also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Person to Contact for Further Information:

Name: _____

Address: _____

Telephone No.: _____

If the model specific information accompanying this statement of compliance was prepared by a third party organization under the provisions of Section 430.62 of 10 CFR Part 430, the individual (manufacturer) authorizing third party representations:

Signature: _____

Name: _____

Address: _____

Telephone No.: _____

Appendix B to Subpart F of Part 430—Sampling Plan for Enforcement Testing

Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean ($\bar{x}_1$) of the measured energy performance of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \quad (1)$$

where x_i is the measured energy efficiency or energy consumption of unit i.

Step 3. Compute the standard deviation (s_1) of the measured energy performance of the n_1 units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (x_1 - \bar{x}_1)^2}{n_1 - 1}} \quad (2)$$

Step 4. Compute the standard error ($s_{\bar{x}1}$) of the measured energy performance of the n_1 units in the first sample as follows:

$$s_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}} \quad (3)$$

Step 5. Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows.

$$LCL_1 = EPS - ts_{\bar{x}_1} \quad (4)$$

$$UCL_1 = EPS + ts_{\bar{x}_1} \quad (5)$$

where it is a statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

Step 6a. For an Energy Efficiency Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7a.

Step 6b. For an Energy Consumption Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1) and LCL_1) to determine one of the following:

(i) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7b.

Step 7a. For an Energy Efficiency Standard, determine the second sample size (n_1) as follows:

$$n_2 = \left(\frac{t\ s_1}{0.05\ EPS}\right)^2 - n_1 \quad (6a)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero *and* if the mean energy efficiency of the first sample ($\bar{x}_1$) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ *and* $\bar{x}_1 \geq$ max (LCL_1 0.95 EES), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero *and* the mean energy efficiency of the first sample ($\bar{x}_1$) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 <$ and $\bar{x}_1 <$ max (LCL_1, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6). If the value of n_2 so calculated is greater than 20 - n_1, set n_2 equal to 20 - n_1.

Step 7b. For an Energy Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{t \ s_1}{0.05 \ EPS}\right)^2 - n_1 \qquad (6b)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal of the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero *and* if the mean energy consumption of the first sample ($\bar{x}_1$) is either equal to or less than the upper control limit (LCL_1) or equal to or less than 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ *and* $\bar{x}_1 \leq$ min (UCL_1, 1.05 EPS), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero *and* the mean energy consumption of the first sample ($\bar{x}_1$) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ and $\bar{x}_1 \geq$ min (LCL_1, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6). If the value of n_2 so calculated is greater than 20 - n_1, set n_2 equal to 20 - n_1.

Step 8. Compute the combined mean ($\bar{x}_2$) of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1 + n_2} x_1\right) \qquad (7)$$

Step 9. Compute the standard error ($s_{\bar{x}_2}$) of the measured energy performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1 + n_2}} \qquad (8)$$

Note: s_1 is the value obtained in Step 3.

Step 10a. For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5, above) as follows:

$$LCL_2 = EES - t \ s_{\bar{x}_2} \qquad (9a)$$

where the t-statistic has the value obtained in Step 5 above.

Step 10b. For an Energy Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5, above) as follows:

$$UCL_2 = EPS + t \ s_{\bar{x}_2} \qquad (9b)$$

where the t-statistic has the value obtained in Step 5 above.

Step 11a. For an Energy Efficiency Standard, compare the combined sample mean ($\bar{x}_2$) to the lower control limit (LCL_2) to fine one of the following:

(i) If the mean of the combined sample ($\bar{x}_2$) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 <$ max(LCL_2, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{x}_2$) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 \geq$ max(LCL_2, 0.95 EES), the basic model is in compliance and testing is at an end.

Step 11b. For an Energy Consumption Standard, compare the combined samle mean ($\bar{x}_2$) to the upper control limit (UCL_2) to find one of the following:

(i) If the mean of the combined sample ($\bar{x}_2$) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy efficiency standard (EPS), whichever is less, i.e., if $\bar{x}_2$ min(UCL_2, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{x}_2$) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 \leq$ min(UCL_2, 1.05 EPS), the basic model is in compliance and testing is at an end.

Manufacturer—Option Testing

If a determination of non-compliance is made in Steps 6, 7, or 11, above, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested, with n_3 chosen such that $n_1 + n_2 + n_3$ does not exceed 20.

Step B. Compute the mean energy performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic model is in compliance and testing is at an end.

a.2. For an Energy Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy consumption standard, whichever is less, and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

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March 4, 1988

Part V

Copyright Royalty Tribunal

1985 Cable Royalty Distribution Proceeding; Notice of Final Determination

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 87-2-85CD]

1985 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of final determination.

SUMMARY: The Copyright Royalty Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of royalty fees paid by cable systems for secondary transmissions during 1985.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th St. NW., Suite 450, Washington, DC 20036, (202-653-5175).

SUPPLEMENTARY INFORMATION:

Authority

Section 111(d)(3) of the Copyright Act, as amended August 27, 1987, authorizes the Copyright Royalty Tribunal to distribute annually royalty fees paid by cable systems to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) Any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) Any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under paragraph (1)(A); and

(C) Any such owner whose work was included in nonnetwork programming consisting of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

This Proceeding

In this proceeding, the Tribunal takes up the distribution of the royalty fees deposited by cable operators for the calendar year 1985. In accordance with past procedure, the Tribunal resolved that the 1985 distribution proceeding would be conducted in two phases. In Phase I, the Tribunal would determine the allocation of cable royalties among various program categories of claimants. The Phase I categories were: Program Suppliers, Sports, Public Broadcasting Service, U.S. Commercial Television, Music, Devotional Programs, Canadian Programs, Noncommercial Radio and Commercial Radio. In Phase II, the Tribunal would allocate cable royalties to individual claimants within a program category.

For this 1985 proceeding, there were no controversies in Phase I. All Phase I parties settled based upon the allocations made by the Tribunal in the 1983 cable distribution proceeding. (The 1984 Phase I controversy was similarly settled on the basis of the 1983 allocations.) In Phase II, there were three controversies.

Controversy one: Within the Program Suppliers category, two parties advanced claims which, when combined, exceeded 100% of the category. The Motion Picture Association of America, Inc. (MPAA) claimed 99.74%. Multimedia Entertainment, Inc. (Multimedia) claimed 1.1%.

Controversy two: Within the Music category, the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. (SESAC) jointly claimed 100%. Asociacion de Compositores y Editores de Musica Latinoamericana (ACEMLA) claimed 1.235%.

Controversy three: In the 1984 proceeding, both the National Broadcasting Company (NBC) and Worldvision Enterprises, Inc. (Worldvision) claimed the royalties attributable to secondary transmissions of "Little House on the Prairie." The Tribunal determined that Worldvision was the proper claimant. NBC appealed the Tribunal's determination. In this proceeding, NBC and Worldvision have again claimed for "Little House on the Prairie," but have agreed that whatever disposition the Court of Appeals renders in the appeal of the 1984 determination shall apply as well to the 1985 royalties. Consequently, no new evidence was introduced regarding "Little House on the Prairie" in this proceeding.

Background and Chronology

Six hundred and ninety-six (696) individual or joint claims were filed with the Tribunal for the 1985 cable royalty fund. On January 13, 1987, the Tribunal published a notice directing all claimants to inform the Tribunal by March 2, 1987 whether a controversy existed with regard to the distribution of the 1985 cable copyright royalty fees. 52 FR 1373.

In response to a request filed by the Phase I claimants, the Tribunal ordered an extension of the date for controversy comments to 15 days after publication in the Federal Register of the Tribunal's determination of the Phase II controversies of the 1984 cable distribution, which turned out to be April 1, 1987. *Order* dated February 27, 1987.

Based upon the written comments filed April 1, 1987, the Tribunal concluded that controversies existed regarding the distribution of the 1985 cable copyright royalty fees, both in Phase I and in Phase II of the proceeding, effective April 22, 1987. The Tribunal ordered that written direct cases in Phase I be filed by June 22, 1987. 52 FR 13118 (April 21, 1987).

On July 2, 1987, after having requested the Tribunal to postpone the filing of written direct cases due to settlement negotiations, the Phase I claimants notified the Tribunal that they had reached a settlement of all Phase I controversies, and that they had agreed to accept the same Phase I shares as had been allocated in the Tribunal's final determination in the 1983 cable distribution proceeding. Consequently, the Tribunal published a notice terminating Phase I of the 1985 cable royalty proceeding. 52 FR 27044 (July 17, 1987).

At the same time, the Tribunal ordered a complete distribution of 1985 cable royalties for all Phase I categories, except Music and Devotional, reserving such amounts as was deemed necessary to resolve the remaining Phase II controversies in those categories. Although there was a controversy within the Program Suppliers category, a 100% distribution of the royalties in that category was ordered based upon the stipulation by the parties that in the event any party received an excess amount, that party would refund to the Tribunal the difference plus the interest that would have accrued had that amount remained in the 1985 royalty fund. *Id.*

On September 2, 1987, the Tribunal ordered written direct cases in the MPAA-Multimedia controversy to be filed by October 6, 1987, and all other direct cases to be filed by October 5, 1987.

On October 5, 1987, ASCAP, BMI and SESAC filed their joint written direct case, and ACEMLA filed its written direct case in the Music controversy. No written direct cases were filed in the Devotional category, the Tribunal having been notified by that date that all the claimants in the Devotional category had agreed upon a division of the royalties among themselves.

The hearing of the direct cases in the Music controversy took place on October 20, 1987. ASCAP, BMI and SESAC filed their joint rebuttal case on October 30, 1987. ACEMLA did not submit a rebuttal case. The hearing of the ASCAP, BMI and SESAC rebuttal case took place on November 10, 1987.

The hearing of the direct case in the Program Suppliers controversy took place November 4, 5, and 10, 1987. Written rebuttal cases were filed November 16, 1987, and hearings on those cases took place November 23 and 24, 1987.

The Music claimants filed their Proposed Findings of Fact and Conclusions of Law on December 4, 1987. The Reply Proposed Findings of Fact and Conclusions of Law were filed on December 11, 1987.

The Program Suppliers claimants filed their Proposed Findings of Fact and Conclusions of Law on December 11, 1987. The Reply Proposed Findings of Fact and Conclusions of Law were filed on December 18, 1987.

Controversy One: MPAA and Multimedia

Findings of Fact

The claimants. MPAA is a trade association which represents 94 producers and/or syndicators of syndicated movies, television series and specials. MPAA Ex. 1. Collectively, the 94 claimants seek the cable royalties attributable to 5,954 different syndicated series, movies and specials representing 503,221 quarter-hours of programming on 104 commercial broadcast stations which were retransmitted by cable systems in 1985. Test. of Allen Cooper, pp. 6–7; MPAA Ex. 4.

Multimedia is the producer and syndicator of the following programs: "Donahue"—260 hours of news/interview programs, including 210 original programs, and 50 repeat programs in 1985; "Sally Jessy Raphael"—260 half-hours of interview/talk programs, including 225 original programs and 35 repeat programs in 1985; "Pop! Goes the Country"—36 half-hour country music programs; "Music City U.S.A."—38 half-hour country music programs; "New Music City U.S.A."—14 half-hour country music programs; "Young People Specials"—10 half-hour children's features: "My Mother the Witch," "The Day Dad Got Fired," "Buddies," "Crazy Carlita" (original and repeat), "Danny & the Killer Rain," "That Funny Fat Kid," "Zerk the Jerk," "My First Swedish Bombshell," and "A Christmas Story" (six of these were first-run programs in 1985); "Music and Entertainment Specials"—six prime time country music specials and one entertainment special, including: "19th Annual Music City News Country Awards," "5th Annual Top Country Hits," "Family Affair: Osmonds' 25th Anniversary," "Statlers' Christmas Present," "Winning Hand" (original and repeat), and "American Beauty Search." Multimedia-owned broadcast stations also produced and distributed "Robbins Report," a bimonthly show, 20 sports related shows and three holiday programs. Test. of Richard Thrall, pp. 3–5.

MPAA's claim. As a part of its case for several distribution proceedings, MPAA has commissioned a special Nielsen study to prove its entitlement. 47 FR 9880; 48 FR 9554; 51 FR 12794; 52 FR 8416. The study measures the hours of distant signal nonnetwork programming which are viewed by cable households. *Id.*

For this proceeding, MPAA selected to be included in the Nielsen study all U.S. commercial television broadcast stations which reached a minimum average of 100,000 cable subscribers, as determined from the statement of accounts filed by the cable systems during the two semiannual accounting periods of 1985. Test. of Allen Cooper, p. 3. A total of 104 commercial stations met MPAA's criteria: 64 network-affiliates stations, and 40 independent stations (including 2 Spanish-language specialty stations). *Id.* The 104 broadcast stations account for 86.5% of all distant signal carriage of U.S. commercial programs by Form 3 cable systems. *Id.*, p. 4.

MPAA commissioned the A.C. Nielsen Company to provide data derived from the Nielsen Station Index (NSI) surveys conducted during January, February, May, July, October and November, 1985. The NSI surveys encompass a four-week period during each of these six months. The February, May and November surveys provide data for all stations in all markets. The July survey measures the viewing of stations in 203 of the 219 markets. The January and October surveys are limited to stations in major markets only—23 in October and 17 in January. The markets surveyed in October cover 45.6% of all U.S. television households; the January markets encompass 38.1% of all households. The data developed by Nielsen during all six survey periods are projected to reflect national audiences. *Id.*, pp. 2–3.

The 104 broadcast stations designated for the special Nielsen study broadcasted a total of 750,178 quarter-hours of nonnetwork programming during the survey periods. (Nielsen surveys exclude programs broadcast between 2:00 a.m. and 6:00 a.m., Monday–Friday, and between 2:00 a.m. and 7:00 a.m. on Saturday and Sunday.) Total household viewing hours of distant signal programs in cable households exceeded 3.1 billion. Of these totals, programs classified by Nielsen upon instruction from MPAA as syndicated series, specials and movies accounted for 574,213 quarter-hours of programming and 2,578,642,581 household viewing hours. *Id.*, p. 5.

Of the 2,578,642,581 household viewing hours, the household viewing hours attributable to the MPAA-represented claimants were 2,451,567,190, and the household viewing hours attributable to Multimedia's programs were 6,388,437. *Id.*, p. 7; MPAA Ex. 4R. In terms of percentages, MPAA has 99.74% and Multimedia has 0.26% of the total of viewing hours attributable to MPAA and Multimedia programs. *Id.*

In the 1984 proceeding, Multimedia's programs were measured to have garnered 6,376,193 household viewing hours, or 0.266% of the total of all household viewing hours attributable to 1984 Phase II claimants. 52 FR 8417. The MPAA, representing 86 claimants for 5,796 works, were measured to have achieved 2,381,600,000 household viewing hours. *Id.*

In the 1983 proceeding, Multimedia's programs were measured to have garnered 7,998,202 household viewing hours, or 0.358% of the total of all household viewing hours attributable to 1983 Phase II claimants. 51 FR 12817. The MPAA, representing 83 claimants for 6,008 works, were measured to have achieved 2,217,169,720 household viewing hours. *Id.*

MPAA contends that the distribution methodology it has devised for the claimants it represents, based upon the special Nielsen study, should be applied by the Tribunal to all claimants, because, in MPAA's view, the special Nielsen study objectively reflects the criteria enunciated by the Tribunal for assessing the relative value of the programs the claimants own. Test. of Allen Cooper, p. 8. Consequently, MPAA believes that it has shown entitlement to 99.74 of the Phase II royalties, and Multimedia has shown entitlement to 0.26%. Reb. Test. of Allen Cooper, p. 13.

Criticisms of Nielsen Study. Multimedia disagrees with MPAA's contention that the Nielsen study should be the sole basis for the Tribunal's allocation. Multimedia argues that the Nielsen study is statistically flawed, which flaws are particularly detrimental to Multimedia's claim, and further that the Nielsen study is not directly relevant to the Tribunal's stated criteria. Reb. Test. of Richard Thrall, pp. 2–10.

Statistical flaws. The Nielsen study is not a census of all cable household viewing of all distant-signal programs. Only the viewing of those programs shown on broadcast signals reaching a minimum average of 100,000 cable households are measured. The 104 broadcast stations used for the 1985

special study account for 86.5% of all distant signal carriage of U.S. commercial programs by Form 3 cable systems. Test. of Allen Cooper, p. 4.

The Nielsen study does not measure every program aired by the 104 broadcast stations. Only those programs broadcast during the four sweep periods and the two partial sweep periods were measured. The partial sweep in October covered 45.6% of all television households; the partial sweep in January covered 38.1% of all television households. *Id.*, pp. 2–3. Giving the October partial sweep 45.6% credit, and the January partial sweep 38.1% credit, the Nielsen study measures 37.2% of the year's programming on the average selected broadcast station. (16 full sweep weeks plus 1.824 weeks in October, and 1.524 weeks in January divided by 52 weeks in a year.)

Combining the testimony that the 104 measured broadcast stations account for 86.5% of distant signal carriage of U.S. commercial programs by Form 3 cable systems, and that the study measures 37.2% of the programming on those stations, the special Nielsen study measures 32.2% of all distant signal programming carried by Form 3 cable systems (86.5% x 37.2%).

Multimedia listed in its evidentiary showing its 16 specials, the broadcast stations on which they were aired, when they were aired, which cable systems carried them, and the number of subscribers to those systems. Multimedia Exs. 16–20. Multimedia performed an analysis of the total number of instances of carriage multiplied by Form 3 cable subscribers of Multimedia programs which occurred during 1985 versus the number of instances of carriage multiplied by Form 3 cable subscribers which the Nielsen study measured. Multimedia Ex. R–2. The number of instances of carriage times Form 3 cable subscribers which the Nielsen study measured (15,190,583) was 11.4% of the total number of 1985 instances of carriage times cable subscribers (133,336,682). *Id.* Consequently, Multimedia argues that its specials were significantly undermeasured by the 1985 special Nielsen study.

The Nielsen study does not measure viewing by cable subscribers of Form 1 and Form 2 cable systems (those systems grossing less than $292,000 per half-year). Test. of Allen Cooper, p. 3. According to Multimedia's research, approximately 4.6 million cable subscribers of Form 1 and Form 2 cable systems received Multimedia programming on a distant signal basis. Tr. 135; Multimedia Ex. 18. Less than 3% of copyrignt royalty payments are attributable to Form 1 and Form 2 cable system. 51 FR 12796.

The Nielsen projections of household viewing hours are based on diary entries. The sample diaries are projected to the universe of cable viewing, but the MPAA does not give a statistical error or reliability factor for the resulting total viewing hours. Multimedia argues that because the Nielsen study lacks a statistical error factor, MPAA cannot say that the 1985 Multimedia Nielsen figures are absolutely correct, nor can they say that the 1983, 1984 or 1985 viewing hour totals for Multimedia are in fact materially different. Multimedia Reply Proposed Findings, p. 5.

Multimedia repeated its contention raised in previous proceedings that the Nielsen diary system is seriously flawed. Reb. Test. of Richard Thrall, p. 8. Criticisms of the Nielsen diary system which appeared in articles in Forbes, Broadcasting Magazine, The Washington Post, The New York Times and other publications were submitted by Multimedia. Multimedia Ex. R–6. The concerns raised in these articles relate to the Nielsen Television Index (NTI) study, and in particular the NAC portion of that study. The NAC measures audience demographics based on a fixed, constant sample of about 600 households. Tr. 561. These demographics are later merged with the NTI meter results from about 1800 households to give the audience composition of those watching the programs. Tr. 561–562. The MPAA-Nielsen study relies upon Nielsen Station Index (NSI) diary information which relies upon approximately 450,000 in-tab diaries (some of which are rejected when believed to be inaccurate or incomplete). Test. of Allen Cooper, p. 3. None of the articles submitted by Multimedia addresses the validity of the NSI diaries. Tr. 563–564.

Multimedia sought to show that MPAA's instructions to the Nielsen company regarding which counties were distant and which were local were often in error. Reb. Test. of Richard Thrall, pp. 8–9. However, on cross-examination, it was shown that in every instance raised by Multimedia, MPAA had correctly identified the distant counties and the local counties in its instructions to Nielsen. Tr. 529–37; MPAA Exs. 1RX–4RX.

Multimedia also sought to establish that in the great volume of data generated by the Nielsen study, six volumes of almost 2,700 papers containing more than 64,000 individual entries, there were numerous errors, such as several of the series airing on WTBS having the same time and date entry. Multimedia R. Ex. 7. On cross-examination, it was shown that although there were three programs in the May, 1985 data listed for the 7:30 a.m. time slot, there were no programs listed in the 8:00 a.m. or 8:30 a.m. time slots. MPAA Ex. 7RX. MPAA contends this shows that although there were some data errors, they did not result in doublecounting, and were later corrected when the data was reviewed and verified by Cable Data Corporation, MPAA and the individual claimants. MPAA Reply Findings, pp. 21–22. Test. of Marsha Kessler, pp. 8–9, 11–16.

Relevance of Nielsen study. Multimedia contends that the Nielsen study is not relevant to at least two of the Tribunal's criteria for valuating claims: quality and marketplace value. Reb. Test. of Richard Thrall, pp. 4–8.

Regarding quality, Multimedia contrasted 10 MPAA-represented movies, "Shalako," "The Ambushers," "Night of the Generals," "Where Angels Go, Trouble Follows," "The Last Safari," "Journey to Shiloh," "Krakatoa, East of Java," "Five Card Stud," "The Revengers," and "Hook, Line and Sinker," each of which would receive under the Nielsen methodology, by Multimedia's estimation, more than $40,000 in royalties, with critical reviews by recognized movie critics. The critics gave each of the 10 named movies poor reviews. Multimedia R. Ex. 3. An MPAA exhibit indicated that "Shalako," one of the movies named by Multimedia for its poor reviews, received favorable reviews from other recognized movie critics. MPAA Ex. 9RX; Tr. 582–585.

Regarding marketplace value, Multimedia prepared an analysis of eight movies which appeared in the 1985 Nielsen study, and which were also purchased for exhibition by Multimedia-owned broadcast stations. Based upon the confidential price actually paid by Multimedia-owned broadcast stations, Multimedia projected the value of one run of the movies as if it were aired in 100% of the U.S. television markets. Then Multimedia calculated what one run of the movies would receive in terms of cable royalty compensation based upon the Nielsen methodology. Reb. Test. of Richard Thrall, p. 6; Multimedia R. Ex. 5. Comparing the projected value of the movies on U.S. television broadcast markets with the estimated cable royalty value of the movies under the Nielsen methodology, Multimedia contends that the Nielsen-based cable compensation is "significantly out of whack with the true marketplace value of the product * * *" *Id.*, p. 7. Specifically, Multimedia cited the example of "The Hellfighters," which, by Multimedia's calculations, is worth

about $11,000 per run for the entire U.S. television market, including all cable and off-the-air households, but is compensated by MPAA at about $21,000 per run from its share of the cable royalties due solely to the viewing hours it garnered under the Nielsen study. *Id.* Multimedia conceded when presenting its analysis that its projection to 100% of the U.S. television markets was not based upon a scientific sample, that the sample was very small, and that there are competitive forces within each television market that will lead to variation in the price paid, so that the actual per run value might be two, three or four times greater than reflected in the Multimedia analysis. Tr. 504, 607.

Richard Thrall, senior Vice President of Programs for Muitimedia posited his view of why the Nielsen data is "out of whack" with the marketplace value of the works. In his view, movies no longer go directly to the broadcast market after their theatrical runs. Instead they go into the home video rental market, then into the pay cable market such as HBO and Showtime, and then finally to the broadcast market, so that by the time they have reached the broadcast market, their marketplace value has declined greatly. Tr. 500–501.

MPAA challenged the validity of the comparisons rendered by Multimedia between 1985 television market prices and 1985 cable royalty valuations. Because the Multimedia analysis of the television market was a straight-line amortization of the price of movies over many years, the television market estimated price per run remains constant year-in, year-out. Yet, the MPAA royalty compensations change dramatically from year to year, based as they are on Nielsen viewing data. MPAA argues that for the Multimedia analysis to have any validity, the analysis must be expanded to include more years. MPAA introduced an exhibit regarding 1984 royalty compensations for the same eight movies. Specifically, the example of "The Hellfighters," which would get an estimated royalty compensation in 1985 of $20,806 would only get $3,168 from the 1984 fund. MPAA Ex. 11 RX. Another film, "Jubilee Trail" which was estimated by Multimedia to have a U.S. television market value of $16,025 in 1985, and which was estimated to be eligible for a Nielsen-based royalty compensation of $36,426 in 1985, would only have received $837 for 1984. *Id.*

Multimedia's claims. Multimedia advanced five factors to support its request for an increase in its award from 0.825% to 1.1%: (1) Increase marketplace value and popularity of "Donahue"; (2) increased ratings and number of households reached by the "Young People's Specials"; (3) an increase of total audience and in average audience for its country music specials; (4) the first full year of national syndication of "Sally Jessy Raphael"; and (5) the showing that much cable carriage of Multimedia specials was not measured by the MPAA-Nielsen study. Multimedia Proposed Findings, pp. 4–5.

"Donahue". In 1985, "Donahue" was broadcast live on WNBC, New York, New York, and was carried by 205 affiliates. Test. of Richard Thrall, p. 6; Tr. 168, 181. Total cable household viewing hours of "Donahue" as a distant signal rose from 5,397,397 from 1984 to 5,872,269 in 1985, an increase of approximately 8.8%. MPAA Ex. 2R. "Donahue" received daytime broadcast ratings in 1985 of 7, 6, 6, and 6 for the four sweep periods, as compared to daytime ratings of 6, 6, 5, and 6 for the same periods in 1984. Multimedia Ex. 4. The daytime share for "Donahue" was 28, 30, 27 and 28 for the four sweep periods in 1985, as compared with 28, 28, 23, and 27 for the same sweep periods in 1984. *Id.*

Multimedia performed an advertising analysis comparing how much revenue "Donahue" generates for its affiliates with the total of all nonnetwork, non-local news spot sales. Assuming a 100% sellout rate, "Donahue" generated $121,502,360 in advertising revenues or 1.61% of all 1985 nonnetwork, non-local news spot sales. Multimedia Ex. 3. Multimedia's advertising study performed for previous proceedings assumed an 80% sellout rate. Tr. 154–55. MPAA adjusted all data presented by Multimedia in all years to be on the basis of a 100% sellout rate. On that basis, "Donahue's" advertising share was 1.93% in 1983, 1.77% in 1984 and 1.61% in 1985. MPAA Ex. 1X.

"Young People's Specials". In 1985, ten "Young People's Specials" were broadcast in 148 broadcast stations, compared with 143 broadcast stations in 1984. Multimedia Ex. 15; 1984 Multimedia Ex. 18. The average rating for the increase of approximately 7% over 1984. Multimedia Ex. 6 revised. The Nielsen study identified 17,146 household viewing hours attributable to the 10 specials, down from 43,954 household viewing hours measured in 1984. MPAA Ex. 2R.

Country Music Specials. In 1985, Multimedia syndicated 7 country music and entertainment specials (six originals and one repeat). These specials' averaged ratings were 13.0 and average total audience were 11,078,500, and average average audience were 5,435,700. Multimedia Ex. 10. In 1984, Multimedia syndicated 25 country music and entertainment specials (15 originals and ten repeats). The seven 1985 Multimedia specials had average total audiences and average average audiences of 76% and 68% higher than the 25 1984 Multimedia country music and entertainment specials. Multimedia Ex. 10.

The time for all Multimedia country music and entertainment specials on all broadcast stations during 1985 was 41.1 hours. Multimedia Ex. 15. The time for all Multimedia country music and entertainment specials on all broadcast stations during 1984 was 84.3 hours. 1984 Multimedia Ex. 18.

The Nielsen viewing hours measured for Multimedia country music and entertainment specials in 1985 were 64,512. MPAA Ex. 2R. The Nielsen viewing hours measured for Multimedia country music and entertainment specials in 1984 were 361,738. Id

"Sally Jessy Raphael"—"Sally Jessy Raphael" is a news/interview program first introduced in mid-1984. 1985 was the first full year of syndication. Test. of Richard Thrall, pp. 5, 8. The program's carriage of station affiliates increased to 71 during 1985, up from 25 in 1984. Tr. 123; 1984 Multimedia Ex. 18. The cable household viewing hours, according to the MPAA-Nielsen study rose from 83,392 in 1984 to 298,912 in 1985. MPAA Ex. 2R. "Sally Jessy Raphael" garnered a broadcast daytime rating of 3, and its daytime total persons reached rose from 529,000 in November, 1984 to 1,382,000 in November, 1985. Multimedia Ex. 8.

In response, MPAA contends that "Sally Jessy Raphael" is not an addition to Multimedia's line-up, but a substitute for other series which have been discontinued by Multimedia. MPAA Proposed Findings, pp. 30–31. MPAA noted the discontinuance of "Braun & Company," a series which had 229,620 cable household viewing hours in 1984, and which had a broadcast rating of 5 in 1983. MPAA Ex. 2R; 1983 Multimedia Ex. 7. MPAA also noted the discontinuance in 1985 of "Pop! Goes the Country," another Multimedia series. MPAA Proposed Findings, p. 31; Multimedia Ex. 15, fn. 4.

Specials underrated by Nielsen study methodology. Multimedia argues that its showing regarding the extent to which the Multimedia specials are not measured by the Nielsen study merits increasing its award. Multimedia Proposed Findings, p. 5.

Conclusions of Law

MPAA and Multimedia have shown entitlement to 99.175% and 0.825% of the

Program Suppliers Phase I allocation, respectively.

In the 1984 proceeding, the Tribunal awarded the Phase II litigants as follows: MPAA—98.475%; Multimedia—0.825%; NAB—0.7%. In this year's proceeding, MPAA reached a settlement with NAB, so that the only two claimants before the Tribunal are MPAA and Multimedia.

The 1985 proceeding was characterized by two main issues: the role of the MPAA-commission Nielsen study of cable household viewing, and whether circumstances had changed for either of the parties since 1984.

Nielsen Study

MPAA's basic argument is that the Tribunal should use the MPAA-commissioned special Nielsen study of cable household viewing hours as the sole measure by which to make Phase II allocations. Accordingly, MPAA argues that Multimedia should be reduced from 0.825% to 0.26%.

Multimedia argues against the sole use of the Nielsen study data on two grounds, that the study itself is incomplete, and that the study is not directly relevant to the task before the Tribunal.

In every one of the previous Phase II decisions rendered by the Tribunal, the Tribunal has expressed a view that lies between those who favor complete adherence to the Nielsen study and those who argue against its relevance, and that is, that the Nielsen study provided by MPAA is the starting off point, but not the sole basis, upon which the Tribunal makes its allocations.

The reason for this is as follows:

The Tribunal attempts to simulate a marketplace—the importation by cable operators of distant broadcast signals—which, by virtue of the compulsory license, does not exist. Hence, the Tribunal must reason by analogy. The marketplace closest to the importation of distant signals marketplace is the one that exists between the cable operator and the cable subscribers and that is the choice of whether cable subscribers will subscribe to the cable system or not. That, in turn, is aided greatly by a knowledge of the cable subscribers' viewing habits. However, we have agreed with those who argued in previous proceedings that the cable industry is not as driven by audience viewing as the broadcast industry is, because the cable industry is not advertising-based, but depends instead on selling subscriptions, so that adding to the diversity of the offerings which may induce more people to subscribe could be more valuable to a cable operator than the actual viewing achieved by the individual programs.

MPAA has offered no new arguments in this proceeding to show why the Nielsen data is the sole relevant information for royalty allocations, but only repeated its view that the Nielsen data perfectly reflects the marketplace. Therefore we once again decline to make our allocations upon the Nielsen study data alone.

However, having said that, we give great reliance on the Nielsen data and we note that all but one of Multimedia's criticisms of the Nielsen's statistical reliability fail. First, Multimedia unsuccessfully attempted to show that either MPAA or Nielsen is less than diligent in its production and analysis of the data. MPAA's instructions to the Nielsen company, and Nielsen's reporting of the data and its conclusions from the data seemed to us especially careful, certain typographical errors notwithstanding. Multimedia's complaints about the diary method were addressed to the Nielsen Television Index Study, and in particular to the NAC portion of that study, and not to the Nielsen Station Index diary information which is what MPAA-Nielsen uses. Hence, its criticism of the diary method was not on point. Finally, although Multimedia correctly points out that the Nielsen study does not measure Form 1 and Form 2 systems, they account for less than 3 percent of the distant signal cable royalties, and it is doubtful that including any information from Form 1 and 2 systems would alter the data significantly.

We do agree with Multimedia that its specials were undermeasured by the Nielsen study. Nielsen, on the average, measures approximately 32.2% of all programming during the calendar year. According to an analysis in Multimedia's case, their specials were studied only 11.4%. Last year, we gave credit to Multimedia's argument that its specials were undermeasured, and accordingly, did not lower them any further than the 17.5% which we determined in the 1984 proceeding. We stated, however, that for Multimedia to continue to prevail in its argument, the Tribunal would have to be given additional data—the amount of Multimedia programs on broadcast stations, when they were aired, whether the programs aired inside or outside of a sweep period, which cable systems carried them, and their subscribership. In this year's proceeding, Multimedia has sustained its burden of the argument with the pertinent information, and the Tribunal has decided not to lower Multimedia's award any further.

MPAA and Multimedia engaged at various times in argument over how and whether to improve the Nielsen data. The Tribunal does not seek changes in the study. The Tribunal is satisfied that MPAA has gone to great lengths in devising a study which measures a great amount of programming, and we agree with MPAA that any extra efforts might well prove too costly in relation to the value of the additional data. On the other hand, the Tribunal will give credit, when shown, that a claimant's programs have not been measured at all, or have been significantly undermeasured.

However, Multimedia's criticism was more than just that the Nielsen study is flawed. Multimedia attempted to show that the Nielsen study was largely irrelevant to what the Tribunal should decide. Multimedia raised the examples of movies whose compensation from MPAA under the Nielsen formula were fairly substantial, but which received poor reviews from the critics. MPAA countered with fairly good reviews from the critics for one of the movies. Multimedia also attempted to show that the 1985 royalties which MPAA would distribute were far in excess of what those same movies would obtain in the broadcast television markets. MPAA countered with a showing that the 1984 royalties which MPAA distributed were quite different than the 1985 royalties, that such royalties vary greatly from year to year, and so they were not out of line with the revenues from broadcast television markets which are averaged over a longer period of years.

In the Tribunal's view, Multimedia did not succeed in establishing its point. Its statistical analysis of the broadcast television markets were, Multimedia conceded, flawed, and its analysis of the 1985 cable royalties had to be expanded to other years, as MPAA states, to have validity. Most important, Multimedia was attempting to compare one analogous marketplace—cable subscriber viewing—with another analogous marketplace—broadcast station payments to syndicator—on the assumption that it is the broadcast station market which is the most relevant market for the Tribunal. We do not agree. As we said, we favor a measure of cable subscriber viewership over a measure of broadcast station payments for syndicated programs, while at the same time, finding neither to be a perfect measure. Accordingly, we do not find that Multimedia is correct that the Nielsen viewing data is "out of whack" with the marketplace value of the programs being measured.

Changed circumstances. It is the Tribunal's view that MPAA's claim and

Multimedia's claim have not changed from 1984 to 1985 to any significant degree to justify a change in their awards.

In 1985, MPAA represented 94 producers and/or syndicators of 5,954 different programs, garnering 2,451,567,190 cable household viewing hours. In 1984, MPAA represented 86 producers and/or syndicators of 5,796 different programs, which garnered approximately 2,381,600,000 cable household viewing hours. The improvement in household viewing hours is about 3%.

Multimedia's cable household viewing hours improved less than 0.2%. Multimedia's programs occupied more broadcast time during 1985 than in 1984, averaging on all broadcast stations 1318.8 hours per week, as against 1237 hours per week in 1984, an improvement of 6.6%. This was due mainly to the first full year of "Sally Jessy Raphael." However, the impact of that program was diminished by the termination of other weekly series such as "Braun and Company", and "Pop! Goes The Country," and by the sharp reduction in the number of country music and entertainment specials. Those specials declined from 25 in 1984 to 7 in 1985. "Donahue" remained strong in 1985, improving in its household viewing hours, 8.8%, and its popularity in the broadcast market was sustained. Our overall view, therefore, is that whatever slight improvements there were in the collective claim of MPAA were matched by the slight improvements in Multimedia's claim, so as to keep their relative positions equal.

Turning to Multimedia's arguments that it deserves an increase from 0.825% to 1.1%, we see nothing in what it presented to justify its request. Multimedia noted some improvements in some of the indicia of broadcast marketplace value for its properties, but these were slight and difficult to equate to cable marketplace values. In any event, they were certainly not of the nature to justify a 33% improvement in its award. For example, Multimedia requested credit for the improvements for Donahue in its daytime broadcast ratings and daytime share, and it requested credit for a 7% increase in total households reached by the "Young People's Special." These marginal improvements were given credit only to the extent that they served to offset the improvements in MPAA's claim, but nothing more.

Multimedia's claim for improved popularity for its country music and entertainment specials is not valid. The number of country music and entertainment specials declined over 70%, from 25 to 7, and its Nielsen cable household viewing hours, declined over 80%. That those remaining specials averaged higher total audiences and average audiences than the 25 from 1984 only serves to stem somewhat the loss to Multimedia's claim resulting from the decline in the specials, but in no way justifies an increase.

As noted earlier, the credit that the Tribunal could have given to Multimedia's "Sally Jessy Raphael" was mitigated by the loss of "Braun & Company," the ending of "Pop! Goes the Country," and the decline in country music and entertainment specials. Finally, Multimedia argued that it should be given a higher award due to the undermeasuring by Nielsen of its specials. The credit for the undermeasurement has already been built into Multimedia's award. Multimedia's success is showing an undermeasurement only served, as we said earlier, to avoid a lowering in the award. Considering that specials have become a smaller and smaller portion of Multimedia's claim over the years, the impact of the undermeasurement is not sufficient to justify a raise in the award.

Finally, MPAA states that because it has entered into a settlement with NAB, and because NAB has already received from the Tribunal through partial distribution its royalties based on last year's percentage, the Tribunal should state that the percentage awards to MPAA and Multimedia apply only after subtracting from the total the amount distributed by the Tribunal to NAB. We do not agree with MPAA. We have stated that Multimedia deserves the same award, 0.825%, as it received last year. In order to achieve this, the 0.825% must be from the entire Program Suppliers allocation, and not from the Program Suppliers allocation minus the NAB distribution. Otherwise, Multimedia will be sharing the cost of a settlement it did not enter.

Controversy Two: ASCAP, BMI, SESAC and ACEMLA

Findings of Fact

The claimants: ASCAP, BMI and SESAC (hereinafter A/B/S) are three performing rights societies which license the public performance of nondramatic musical works on behalf of copyright owners. 17 U.S.C. 116(e)(3).

ACEMLA is the assumed name of Latin American Music Co., a music publisher, which has sub-publishing agreements with several Latin American entities, and which has some agreements with individual composers, to represent their interests in the United States. ACEMLA is independent of ASCAP, BMI or SESAC. 52 FR 46324.

A/B/S' claim: A/B/S claims 100% of the Phase II allocation for the Music category. A/B/S Proposed Findings, par. 2. A/B/S bases its claim on the testimony by its witnesses that collectively ASCAP, BMI and SESAC license all but an incalculably small percentage of music performed in the United States in all media, including radio, television, concerts, and commercial businesses. 1984 Test. of Alan H. Smith, p. 2; 1984 Tr. 37–38, 42–43; 1982/1983 Test. of Gloria Messinger, p. 2.

For 1978, the total license revenues for ASCAP, BMI and SESAC for all public performances were approximately $190 million. 45 FR 63041. For 1982 and for 1983, the total license revenues for ASCAP, BMI and SESAC were approximately $350 million, each year. 1982/83 Test. of Gloria Messinger, p. 3.

ACEMLA stipulated that its claim is only for the portion of the cable fund attributable to Spanish-language music, conceding all other portions of the music category to A/B/S. ACEMLA Proposed Findings, pp. 1–2; Tr. 18–19. Accordingly, A/B/S attempted to define by various mathematical indices the part of the music category that is attributable to Spanish-language music.

According to the 1985 edition of *Broadcast Yearbook*, there were 33 American and Mexican television stations which characterized themselves as Spanish-language stations, and which were receivable over-the-air in the United States. A/B/S Ex. 1. Data compiled by Cable Data Corporation (CDC) indicated that 17 Spanish-language stations were carried as distant signals in 1985; 11 of which were American and 6 of which were Mexican. Test. of Peter Boyle, p. 2.

A/B/S and ACEMLA stipulated to an analysis of CDC's data which concluded that Spanish-language stations in 1985 accounted for 0.96% of all instances of carriage, 1.26% of the number of cable subscribers, and 1.21% of the cable royalty fees generated. Stipulation, dated October 30, 1987, Joint Table 1.

A/B/S contended that the CDC data must be further narrowed to account for the fact that not all programming on Spanish-language station is in Spanish. Using figures prepared for and introduced in the 1984 proceeding, A/B/S discounted the CDC data for the English language and other language programming on the subject stations and arrived at a conclusion that Spanish-language programming on Spanish language stations accounted for 0.69% of the instances of carriage, 0.97% of the

number of subscribers, and 0.92% of the cable royalty fees generated. 1984 Test. of Peter Boyle, pp. 8–9; A/B/S Ex. 4; A/B/S Table 2 (revised).

In regard to Spanish-language music, Peter Boyle for A/B/S testified that ASCAP, BMI, and SESAC license all Spanish-language television stations because as a general matter all television stations in the United States hold licenses from ASCAP, BMI, SESAC so that they can perform music. Tr. 107. A/B/S did not introduce proof that they license the Spanish language stations specifically. *Id.*

A/B/S also incorporated by reference its list of foreign performing rights societies which they represent in the United States from such countries as Argentina, Bolivia, Brazil, Chile, Colombia, Mexico, Paraguay, Peru, Philippines, Spain, Uruguay, Venezuela, and from the Commonwealth of Puerto Rico. A/B/S Evidentiary Statement, Dec. 4, 1984. To supplement their earlier showing, Peter Boyle of ASCAP contacted the performing rights society in Venezuela, Spain and Mexico, and the advice he received was that the music in the television programming produced in those countries were entirely within their repertoires and is licensed in the United States through ASCAP, BMI and SESAC. Test. of Peter Boyle, p. 7; Tr. 88–89, 108.

A/B/S incorporated by reference various specific showings of the individual Spanish-language songs which are in the combined repertoires of ASCAP, BMI and SESAC which were introduced in previous jukebox distribution proceedings: Lists of popular Spanish-language songs in combined ASCAP, BMI, and SESAC repertoires, Joint Statement of A/B/S, dated March 14, 1984 (1982 list); Joint Evidentiary Statement of A/B/S, dated December 4, 1984 (1983 list); List of most-performed Spanish-language works in the combined ASCAP, BMI and SESAC repertoires for 1982 and 1983, Response of A/B/S, dated August 9, 1985; List of Popular and most-performed Spanish-language songs in combined ASCAP, BMI and SESAC repertoires which first appeared in 1984, Settling Parties' Ex. 4, 1984 Jukebox Distribution Proceeding; BMI printout of copyrighted musical compositions which first entered the BMI repertory in the first six months of 1984, Settling Parties' Ex. 7, 1984 Juke. Dist. Proc.; Partial list of Spanish-language titles first appearing in the ASCAP, BMI and SESAC repertoires in 1985, Settling Parties' Ex. 4 (corrected copy), 1985 Juke. Dist. Proc.; Partial list of works in the Settling Parties' repertoires recorded by performing artists specified by the Copyright Royalty Tribunal and contained in recordings released in 1984 or 1985, or performed on radio in 1985, Settling Parties' Ex. 23B, 1985 Juke. Dist. Proc.

ACEMLA's claim: ACEMLA testified that it taped a number of programs during 1985 which included musical compositions claimed by ACEMLA and which were broadcast by Spanish-language television stations WXTV and WNJU. WXTV and WNJU broadcast to the New York television market. Test. of Raul Bernard, par. 4.

ACEMLA stated it monitored and recorded 29 of its songs on WNJU, Channel 47, Newark, N.J. on three programs of "Asi Canta Ecuador," one program of "Despedida de Ano," one program of "Estudio Alegre," one program of "Show de la 12 (doce) Puerto Rico," and one program of "Show Espectacular." ACEMLA Ex. 1. According to CDC, WNJU was carried by 9 Form 3 cable systems during the first half of 1985 and by 10 Form 3 cable systems during the second half of 1985 on a distant signal basis. Stipulation, Jt. Ex. 1A. These systems reached an average of 193,216 subscribers and paid a total of $201,447 in royalty fees for 1985. Stipulation, Jt. Ex. 1B and 1C.

ACEMLA stated that it taped 21 of its songs on WXTV, Channel 41, Paterson, N.J. on two programs of "Noche De Gala," two programs of "Embajadores de la Musica Colombia (Colombiana)," three programs of "Siempre en Domingo," and one program of "Sabado Espectacular," ACEMLA Ex. 1. According to CDC, WXTV was carried by three Form 3 cable systems during 1985 on a distant signal basis. Stipulation, Jt. Ex. 1A. These systems reached an average of 49,553 subscribers and paid $47,779 in royalty fees for 1985. Stipulation, Jt. Exs. 1B and 1C.

ACEMLA further asserted that WXTV was owned by Spanish International Communications Corporation, whose principals also owned the Spanish International Network (SIN), and that WXTV was SIN's flagship stations during 1985. Accordingly, ACEMLA stated that the 21 songs it found were broadcast on WXTV would also have been performed over SIN's affiliated stations. Test. of Raul Bernard, par. 4. However, ACEMLA had no confirmation from SIN that these programs were actually carried by the SIN affiliated stations. Tr. 15. Those SIN affiliates which were carried on a distant signal basis in 1985 by Form 3 systems were: KMEX, Los Angeles, CA., KWEX, San Antonio, Texas, WLTV, Miami, FL., KCSO, Sacramento, CA., and KDTV, San Francisco, CA. Test. of Raul Bernard, par. 4; Stipulation, Jt. Ex. 1A. The cable systems carrying these stations reached an average of 578,000 subscribers, and paid $605,734 in royalty fees in 1985, according to CDC. *Id.*, Jt. Exs. 1B, 1C.

In 1985, ACEMLA did not license any U.S. television broadcast station; ACEMLA did not license any radio stations except for a license reached in 1986 extended to WNWK, Newark, N.J. for $1500 a year, retroactive to 1985; ACEMLA received no income from any television broadcast station; and ACEMLA made no distribution of royalties to any publisher or composer. 52 FR 46325.

In support of its claim to 1.235% of the Music category, ACEMLA asserts that the royalties attributable to Spanish-language music is the average of the percentage of all cable subscribers receiving Spanish-language stations (1.26%) and the percentage of fees paid by cable operators (1.21%), and that ACEMLA believes it is entitled to all of it on the basis of its assertion that it alone has established that its songs have been included in secondary transmission by cable systems in 1985. ACEMLA Proposed Findings, pars. 1,2,6.

A/B/S Rebuttal of ACEMLA's Claim: A/B/S introduced evidence to show that (1) nine of the programs cited by ACEMLA in support of its claim did not air on the dates ACEMLA said they aired; and (2) eight of the songs which ACEMLA claims belong in the catalogues of A/B/S Rebuttal.

A/B/S introduced evidence that seven of the programs cited by ACEMLA were not listed in TV Guide as being scheduled for broadcast on the specific dates listed in ACEMLA Ex. 1, and that two other programs could not be traced to TV Guide because ACEMLA had not provided the specific dates of broadcast. Reb. Test. of Peter Boyle. According to Dr. Boyle, this evidence undermined ACEMLA's claim to 30 of the 50 performances of its songs.

Three of the nine programs questioned by Dr. Boyle were weekly episodes of "Asi Canta Ecuador." ACEMLA introduced invoices received by the producer of these programs from WNJU indicating that the programs had been broadcast on the dates listed in ACEMLA Ex. 1. These three programs included 19 of the 50 performances of songs claimed by ACEMLA. ACEMLA Ex. 4RX. The producer also told ACEMLA that TV Guide had either incorrectly listed or omitted entirely other programs he had produced. Id. A/B/S did not check "El Diario La Prensa," a Spanish-language newspaper

published in New York City, to see if ACEMLA's programs were listed there, and ACEMLA argues that that publication would have been a more reliable guide than TV Guide. Tr. 432–3; ACEMLA Proposed Findings, par. 14.

ACEMLA claims in this proceeding for 40 songs performed a total of 50 times in 1985. A/B/S challenges ACEMLA's claim to eight of those songs performed 9 times: "Alegre Amanecer," "Cantares de Navidad," "La Piraqua," "Navidad Negra," "San Fernando," "El Barbarazo," "Patacon Pisao," "La Guacherna." A/B/S asserts that those eight songs are in the combined repertoires of ASCAP, BMI and SESAC, and that challenges to these same songs were raised in the 1984 and 1985 Jukebox Royalty Distributon Proceedings, which challenges were incorporated by reference into this proceeding. A/B/S Rebuttal, p. 4. In response, ACEMLA incorporated by reference the testimony it introduced in the 1984 and 1985 jukebox proceedings to support its right to claim for those eight songs. ACEMLA Proposed Findings, par. 9.

Conclusions of Law

ACEMLA has shown entitlement to a cash award of $1. ASCAP, BMI and SESAC have shown entitlement collectively to the rest of the allocation in the Music category

The Tribunal begins its analysis of the claimants in the Music category by first looking at the relative strengths of ACEMLA and of ASCAP, BMI and SESAC overall. ASCAP, BMI, and SESAC together collect hundreds of millions of dollars in license fees from all sources every year for the public performance of music. Every television station in the United States, including Spanish-language stations, holds a license from one, two or three of them so that music can be performed. On the other hand, ACEMLA is a fledgling entity with an independent repertoire of Spanish-language music for which it has attempted to obtain licenses, but as of 1985, had not yet succeeded in licensing any television station, receiving any licensing income, or making any royalty distribution. ACEMLA conceded at the start of this proceeding that it made no claim for music other than Spanish language music, and therefore the only question is ACEMLA's relative control of Spanish language music vis-a-vis ASCAP, BMI and SESAC.

Concerning only Spanish language music, it is again pertinent that only ASCAP, BMI and SESAC are the licensors of the Spanish-language television stations, and ACEMLA is not. Further, ASCAP, BMI and SESAC represent in the United States the performing rights societies of the Latin American countries, so that any music which is not represented by A/B/S pursuant to their own composers and publishers is represented pursuant to their agreements with Latin American societies. Additionally, each time the Tribunal has made requests of A/B/S for examples of current Spanish-language songs, and songs performed by current Spanish-language artists, they have complied satisfactorily.

Against these showings by A/B/S, ACEMLA has been able to garner a small percentage award in the jukebox proceedings by, among other things, actual jukebox surveys performed by A/B/S which found some ACEMLA-represented works on jukebox, and radio surveys performed by A/B/S which found some performances on radio, plus showings by ACEMLA of the production and distribution of some 45 rpm singles. These showings in the jukebox proceedings do not translate, in our consideration, to performances of ACEMLA's works in television programs. To obtain credit for television performances, it was incumbent upon ACEMLA to show sufficiently convincing evidence.

ACEMLA's actual claim is for 40 songs performed a total of 50 times on two television stations, WXTV and WNJU, and by virtue of the fact that WXTV is the flagship station of SIN, on five other television stations. Comparing these performances to the universe of all performances of music on television during 1985 and carried by cable systems on a distant signal basis—hundreds of thousands of hours of performances of songs, theme music and background music—the 50 performances are insignificant. Applying the Tribunal's five criteria to ACEMLA's claim, we cannot see how the claim can deserve any more than the smallest possible award, $1.

We note that the parties introduced considerable evidence to approach the question of ACEMLA's award mathematically. The Tribunal wishes to make clear that it does not make its allocation based upon a time plus fee generation formula, because, as we have said in the past it is a mechanical formula which does not take into account properly the five criteria upon which the Tribunal bases its decisions: harm, benefit, marketplace value, time and quality. However, the Tribunal has consistently permitted fee generation analyses to be entered into the record, and considers it useful information.

Accordingly, we performed two different mathematical analyses based on two different starting points. In both analyses, the Tribunal worked from an assumption that ACEMLA had proved all 50 performances. The first analysis took as its starting point the total cable fees generated by the Form 3 cable systems carrying the ACEMLA performances. After making the appropriate discount for the percentage of the fees which is attributable to other program categories, and discounting for the sum of music that would have been carried by those systems aside from ACEMLA's claim, the Tribunal arrived at a mathematical result wholly consistent with its view that ACEMLA's claim is limited to $1. The second analysis took as its starting point the percentage of Spanish-language stations versus all television stations. Whether using ACEMLA's argued-for 1.235% or A/B/S' less than 1%, the second fee generation analysis was comparable to the first. These two fee generation analyses confirmed for us what the Tribunal already believed viewing the record as a whole, and that is that ACEMLA's claim is insignificant.

Because of the nature of ACEMLA's claim, it was unnecessary for the Tribunal to determine how many of the performances ACEMLA has proved. Whether ACEMLA proved all 50 performances, or just a few, the award would be the same, since giving ACEMLA maximum credit for its entire claim would not raise its value above the minimum. We will state that we believe that A/B/S did not successfully rebut ACEMLA's claim on the basis of the TV Guide listings. We credit ACEMLA's explanation that TV Guide sometimes misses programming of Spanish-language television stations. We also did not render a decision whether ACEMLA or A/B/S were the proper representatives of eight of the claimed songs, given the value of the claim.

The only remaining question for the Tribunal was whether to award ACEMLA $1 or give ACEMLA no award on the ground that the claim is de minimis. We are persuaded that ACEMLA has shown a prima facie case, that is, that it had some works performed in 1985 over television broadcast stations which works were retransmitted by cable systems to their subscribers. Given that our task is to make awards to copyright owners who meet the requirements set by Congress, we believe that a minimal award is warranted.

Lastly, the Tribunal does not agree with ACEMLA's springboard argument

that by its showing a few performances of Spanish-language music, it should receive all of the music category attributable to Spanish-language music, on the ground that A/B/S hasn't shown any specific performances.

It is true that A/B/S could have put into the record examples of a specific performance of one of its works on Spanish-language television. Absent this, it became necessary for the Tribunal to draw from analogy from previous records that A/B/S licenses all stations, and have a virtual control of all music. However, A/B/S' showing on this needed improvement.

It was up to the Tribunal, for instance, to inquire of A/B/S whether A/B/S licenses all Spanish language stations, and the answer was that A/B/S must, because it licenses all stations. A/B/S did not, on its own enter this evidence as part of its direct case. A second example, ACEMLA objected to Dr. Boyle's testimony regarding his being advised by the Mexican, Venezuelan and Spanish performing rights societies that they still had agreements with A/B/S on the ground that it was hearsay. Although hearsay is admissible in administrative agencies, we were, like counsel for ACEMLA, concerned about the weight of this particular hearsay, and it was only after further inquiry of the witness were we assured that we could give the testimony weight.

Generally, we view A/B/S' case as lax in establishing the essential elements of its case. However, having said this, we also view ACEMLA's case as one composed mostly of unsupported statements. ACEMLA's objections to the hearsay of the other party's case would be better heard if its own case depended less on hearsay. For example, ACEMLA's assertion that the songs performed on WXTV were also carried by other SIN affiliated television stations had no support, and the Tribunal's questioning of the witness revealed that no documentary support existed. As a general observation, the Tribunal would like to see documentary support for the elements of claimants' cases at the beginning of the case when written direct cases are submitted, rather than through the process of discovery, cross examination exhibits, and eleventh-hour surrebuttal.

Therefore, in comparing the two cases, the Tribunal does not see its task as a mechanistically procedural one in which, as ACEMLA would wish, we would give to ACEMLA considerable royalties based upon a conclusion that only they showed specific performance. Rather, the Tribunal attempts to ascertain the reality of musical performances in 1985, and we are persuaded that ACEMLA's repertoire accounted for an insignificant amount of the musical performances in 1985.

Allocations

Pursuant to the Phase I settlement, the Tribunal has adopted the following allocation to categories of claimants in Phase I of the 1985 cable copyright royalty fees available for distribution.

After subtracting the stipulated award to National Public Radio to 0.18% of the entire fund.

Category	Basic	3.75	Syndex
Program Suppliers	67.10	72.00	95.50
Sports	16.35	17.50	0
Public Broadcasting Service	5.20	0	0
Commercial Television	5.00	5.00	0
Music	4.50	4.50	4.50
Devotional Claimants	1.10	0.75	0
Canadian Claimants	0.75	0.25	0
Commercial Radio	0	0	0

The allocation adopted by the Tribunal under Phase II for the individual claimants is as follows:

Program Suppliers:

Motion Picture Association of America, Inc. 99.175%
Multimedia Entertainment, Inc. 0.825%

Music:

Asociacion de Compositores y Editores de Musica Latinoamericana $1.00

ASCAP, BMI and SESAC, collectively—the remainder of the category.

Finally, the NBC-Worldvision controversy for the entitlement to the 1985 royalties attributable to "Little House on the Prairie" is held in abeyance until the outcome of the petition for review of the Tribunal's 1984 final determination filed with the United States Court of Appeal for the District of Columbia Circuit.

Mario F. Aguero,

Chairman.

Dated: March 1, 1988.

[FR Doc. 88-4707 Filed 3-3-88; 8:45 am]

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federal register

Friday
March 4, 1988

Part VI

Department of Health and Human Services

Office of Human Development Services

Runaway and Homeless Youth Program; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS/ACYF/RHYP 13.623-88-1]

Runaway and Homeless Youth Program; Availability of Financial Assistance

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of financial assistance for Basic Center and Coordinated Networking grants.

SUMMARY: The Family and Youth Services Bureau of the Administration for Children, Youth, and Families announces the availability of fiscal year 1988 funds for the Runaway and Homeless Youth Basic Center and Coordinated Networking Grants Program.

Competition for new Basic Center awards will not be possible in all States. See the Table of Allocations by State and the accompanying narrative (Part I, Section F, "Available Funds for Basic Centers") for explanation.

This program announcement consists of five parts and appendices. Part I provides general or background considerations for potential applicants to apply for either Basic Center or Coordinated Networking grants. Part II provides requirements of the Runaway and Homeless Youth Act in regard to services and activities that must be carried out by Basic Center grantees. Part III describes the application process for both the Basic Center and Coordinated Networking grants. Part IV provides instructions for completing the program narratives for Basic Center and Coordinated Networking grant applications and also provides the criteria to be used in evaluating each type of application. Part V provides the instructions for completing an application for both the Basic Center and Coordinated Networking grants. Following Part V are the appendices to be consulted and the forms to be used during the preparation of the application.

DATE: The deadline or closing date for receipt of all applications under this announcement is: May 3, 1988.

ADDRESS: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 341-F, Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-88-ACYF/RHYP.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela A. Johnson, Administration for Children, Youth and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, Telephone: (202) 755-7800.

SUPPLEMENTARY INFORMATION:

Part I: General or Background Considerations

A. Scope of This Program Announcement

This program announcement solicits applications and describes the application process for Basic Center and Coordinated Networking grants under the Runaway and Homeless Youth Program. These grants will be competitively awarded during the third and fourth quarters of fiscal year 1988. Project periods for both categories of grants will be three years.

B. Legislative Authority

Grants under this program are authorized by the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5701 *et seq.* This Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), as amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95-115), the Juvenile Justice Amendments of 1980 (Pub. L. 96-509), and the Juvenile Justice Amendments of 1984 (Pub. L. 98-473). See 42 U.S.C. 5701 *et seq.*

C. Program Purpose

The purpose of the National Runaway and Homeless Youth Program is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (e.g., outreach, temporary shelter, counseling, and aftercare services) of runaway and homeless youth and their families.

Programs receiving Runaway and Homeless Youth Act funding under this announcement are required to adhere to the requirements of 45 CFR Part 1351, the Runaway Youth Program Regulations. Applicants must develop their applications in accordance with those regulations and the review criteria which are included in this announcement.

D. Program Goals and Objectives

The program goals and objectives of the Runaway and Homeless Youth Act are to assist runaway and homeless youth centers to: (a) Alleviate the problems of runaway and homeless youth, (b) reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services, (c) strengthen family relationships and encourage stable living conditions for youth, and (d) help youth decide upon constructive courses of action.

E. Non-Discrimination in Services

All services under this program, including temporary shelter, must be provided in accordance with 45 CFR Parts 80, 81, and 84 pertaining to non-discrimination under programs receiving Federal assistance.

F. Available Funds

1. Basic Center Grants

In FY 1988, the Administration for Children, Youth and Families expects to award approximately $21,414,967 in Basic Center grants. This total will be divided among the States according to their respective populations under the age of 18.

Of this amount $13,811,479 will be awarded in the form of non-competing continuations to current Basic Center grantees having one or two years remaining in their project periods. Grantees in this category will receive instructions from the respective OHDS Regional Offices on the procedures for applying for these extensions. These grantees, which are listed in Appendix G, should *not* apply for funds under this announcement.

In 16 jurisdictions, the entire allocation willl be awarded in the form of non-competing continuations to current grantees. Each of these 16 jurisdictions will receive its full allocation as determined by the State's population of children under the age of 18. In these jurisdictions, no funds will be available in FY 1988 for awards to new grantees. The 16 States in which there will be no competition in fiscal year 1988 are New Hampshire, Vermont, Mississippi, South Carolina, Tennessee, Minnesota, Kansas, Montana, North Dakota, South Dakota, Utah, Wyoming, Guam, Idaho, Palau and the Northern Marianas. Funding for new awards will be available in all other jurisdictions. (Refer to the Table of Allocations by State.)

Approximately one-third of the total funds (or $7,603,488) will be awarded under this announcement in the form of *new* grants according to the procedures outlined in this announcement.

Approximately 110 *new* Basic Center grants will be awarded. Award recipients may include current grantees having project periods ending by September 30, 1988, and new applicants.

New Basic Center grant awards will be made from late June 1988 through the end of September 1988.

All grant applicants should request three-year project periods (SF 424, Part III–Budget Information, Section E). While the project periods assigned to successful applicants will be for three years, initial awards of grant funds will be for only one year. Subsequent awards of funds will depend upon satisfactory performance by the grantees and on the availability of appropriated funds.

Funding recommendations for the new Basic Center applications will be based on the scores assigned to the applications by the non-Federal reviewers who will evaluate each application according to the criteria described in Part IV, Section A, below and on input from ACYF staff. Final decisions will be made by the Commissioner of ACYT.

The number of new Basic Center grants awarded within each State will depend upon the State's allocation for new grants and on the number of acceptable applications. All applicants under this announcement will compete with other applicants in the State in which their servcies will be provided. In the event that an insufficient number of applications meeting the minimum criteria for funding is submitted from any State or jurisdiction, the Commissioner, ACYF, may reallocate any unused funds.

The following Table indicates the FY 1988 allocations for each State. In this table, the amount (if any) shown in the column labeled "New Awards" is the amount available for competition in each State in FY 1988. A zero (-0-) in that column means that no applications from that State will be considered under this announcement because the entire State allocation (as shown in the Totals column) has been set aside for non-competing continuation awards, as explained above.

2. Coordinated Networking Grants

Approximately $750,000 will be available to support grants under this effort. It is expected that grant awards will range from $50,000 to $85,000. The project period for all Networking grants funded under this announcement will be three years. Initial funding will be for one year with subsequent annual funding dependent upon satisfactory performance and the availability of funds.

RUNAWAY AND HOMELESS YOUTH CENTERS, TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdictions—Fiscal Year 1988]

Regions/States	Continuations	New awards	Total
Region I			
Connecticut	$142,345	$108,632	$250,977
Maine	66,896	33,097	99,993
Massachusetts	204,613	39,397	444,010
New Hampshire	86,087	0	86,087
Rhode Island	0	75,161	75,161
Vermont	46,355	0	463,559
Region II			
New Jersey	212,875	393,045	605,920
New York	1,273,052	175,858	1,448,910
Puerto Rico	307,341	107,532	414,873
Virgin Islands	0	15,562	15,562
Region III			
Delaware	20,839	32,137	52,977
District of Columbia	0	45,692	45,692
Maryland	0	367,856	367,856
Pennsylvania	675,622	268,024	943,646
Virginia	290,048	186,079	476,127
West Virginia	67,657	99,219	166,876
Region IV			
Alabama	293,190	75,991	369,181
Florida	488,718	382,085	870,803
Georgia	567,181	0	567,181
Kentucky	87,098	246,655	333,753
Mississippi	265,214	0	265,214
North Carolina	423,980	113,401	537,382
South Carolina	310,244	0	310,244
Tennessee	413,880	0	413,880
Region V			
Illinois	543,259	469,588	1,012,847
Indiana	302,662	186,378	489,040
Michigan	649,114	123,712	817,827
Minnesota	367,525	0	367,525
Ohio	488,345	456,294	944,639
Wisconsin	195,709	224,793	420,502
Region VI			
Arkansas	65,301	148,261	213,562
Louisiana	283,219	162,447	445,666
New Mexico	70,480	76,530	147,010
Oklahoma	297,662	0	297,662
Texas	1,055,856	576,486	1,632,342
Region VII			
Iowa	178,286	69,049	247,335
Kansas	213,893	0	213,893
Missouri	179,951	253,464	433,415
Nebraska	88,330	53,051	141,381
Region VIII			
Colorado	125,141	161,565	286,736
Montana	76,485	0	76,485
North Dakota	62,910	0	62,910
South Dakota	65,559	0	65,559
Utah	204,953	0	204,953
Wyoming	51,321	0	51,321
Region IX			
Arizona	0	301,636	301,636
California	1,510,125	843,692	2,353,817
Hawaii	0	94,696	94,696
Nevada	0	79,134	79,134
American Samoa	0	5,629	5,629
Guam	16,886	0	16,886
Northern Marianas	0	2,980	2,980
Federated States of Micronesia	0	5,832	5,832
Marshall Islands	0	2,631	2,631
Palau	0	1,302	1,301

RUNAWAY AND HOMELESS YOUTH CENTERS, TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdictions—Fiscal Year 1988]

Regions/States	Continuations	New awards	Total
Region X			
Alaska	24,184	32,434	56,619
Idaho	102,973	0	102,973
Oregon	70,669	156,138	226,806
Washington	229,835	152,921	382,756
Total	13,811,479	7,603,488	21,414,967

Part II: Requirements of the Runaway and Homeless Youth Act

Section 311(a), 42 U.S.C. 5711(a), of the Runaway and Homeless Youth Act requires that grants shall be made among the States based upon their respective populations of youth under 18 years of age for the purpose of developing or strengthening local facilities to deal primarily with immediate needs of runaway or otherwise homeless youth, and their families, in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grants shall be determined by the number of such youth in the community and the availability of existing services. Among applicants, priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.

Section 312(a), 42 U.S.C. 5712(a), of the Act requires that, to be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway center (a locally controlled community-based facility) providing temporary shelter and counseling services to juveniles who have left home without permission of their parents or guardians, or to other homeless juveniles.

Section 312(b), 42 U.S.C. 5712(b), of the Act requires that, in order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each center:

(1) Shall be located in an area which is demonstrably frequented by or easily reachable by runaway youth;

(2) Shall have a maximum capacity of no more than twenty children with a ratio of staff to children of sufficient proportion to assure adequate supervision and treatment;

(3) Shall develop adequate plans for contacting the child's parents or relatives and assuring the safe return of

the child according to the best interests of the child, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center, and for providing for other appropriate alternative living arrangements;

(4) Shall develop an adequate plan for assuring proper relations with law enforcement, social service, school system and welfare personnel, and for assuring the return of runaway youth to correctional institutions;

(5) Shall develop an adequate plan for aftercare counseling involving runaway youth and their families within the State in which the runaway and homeless youth center is located and for assuring, when possible, that aftercare services will be provided to those children who are returned to any State other than the State in which the center is located;

(6) Shall keep adequate statistical records, profiling the children and family members which it serves, except that records maintained on individual runaway youths shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth; reports or other documents based on such statistical records shall not disclose the identity of individual runaway youths;

(7) Shall submit annual reports to the Secretary detailing how the center has been able to meet the goals of its plans and report the statistical summaries required by paragraph (6);

(8) Shall demonstrate its ability to operate under the accounting procedures and fiscal control devices as required by the Secretary;

(9) Shall submit a budget estimate with respect to the plan submitted by each center under this subsection; and

(10) Shall supply such other information as the Secretary deems reasonably necessary.

Section 313, 42 U.S.C. 5713, of the Act requires that an application by a State, locality, or private entity for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 312. Priority shall be given to grants smaller than $150,000. In considering grant applications under this part, priority shall also be given to organizations which have a demonstrated experience in the provision of service to runaway and homeless youth and their families.

Section 321, 42 U.S.C. 5731, of the Act requires that records containing the identity of individual youths pursuant to this Act may under no circumstances be disclosed or transferred to any individual or to any public or private agency.

Other standards which Runaway and Homeless Youth Basic Center grantees are expected to meet are found in the Program Performance Standards (Appendix C).

Part III: Application Process

A. Eligible Applicants

1. Basic Center Grants

States, localities, private for-profit and private non-profit agencies, and coordinated networks of such agencies are eligible to apply for Runaway and Homeless Youth Program Basic Center grants under this announcement unless they are part of the law enforcement structure or the juvenile justice system. States are defined to include any State of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the Virgin Islands; Guam; American Samoa; the Commonwealth of the Northern Mariana Islands; and the successor entities of the Trust Territoty of the Pacific Islands: The Republic of the Marshall Islands, the Federated States of Micronesia, and Palau (see 42 U.S.C. 5603 (7)). Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private non-profit agencies.

Applicants are reminded that Basic Center grants may be awarded to agencies which operate a central shelter facility, *or* to agencies which provide emergency shelter through a series of host homes, *or* to agencies which employ a combination of shelter facility(ies) and host homes. Host homes are facilities providing short-term shelter, usually the home of a family, under contract to accept runaway and homeless youth assigned by the Basic Center grantee, usually for a nominal fee, and licensed according to State or local laws.

2. Coordinated Networking Grants

Coordinated networks of agencies are eligible to apply for a Coordinated Networking grant if they are not a part of the law enforcement structure or the juvenile justice system.

A coordinated network of agencies is defined as an association of two or more private organizations whose purpose is to develop or strengthen services to runaway or homeless youth and their families. For the purposes of this announcement, networks are expected to be regional in nature.

B. Assistance to Prospective Grantees

Potential grantees can receive informational assistance in developing applications from the appropriate ACYF regional youth contacts listed in Appendix E or from the Family and Youth Services Bureau in Washington, DC (see Summary for address). Organizations may also receive information from the appropriate Coordinated Network grantee listed in Part V, Appendix F.

C. Application Kit

Application Kits are available from the Family and Youth Services Bureau in Washington, DC. The Application Kit contains a copy of the Runaway and Homeless Youth Act, Questions and Answers on the FY 1988 Funding Cycle, a copy of the Runaway and Homeless Youth Program Regulations, and the Runaway and Homeless Youth Program Fact Sheet. To obtain an Application Kit, call (202) 755–7800 or write to: The Runaway and Homeless Youth Program, Program Operations Division, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013.

D. Application Requirements

To be considered for a Runaway and Homeless Youth Basic Center or Coordinated Networking grant, each application must be submitted on the forms provided at the end of this announcement (see "F" below) and in accordance with the guidance provided herein. The application must be signed by an individual authorized to act for the applicant agency and authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under the Part IV narrative under OMB Control Number 0980–0016.

F. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372,

"Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alaska, Idaho, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these five jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

Therefore, the comment period for State processes will end on July 5, 1988, to allow time for HDS to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, Administration for Children, Youth and Families, Runaway and Homeless Youth Program, 400 Sixth St., SW., Washington, DC 20201, Attn: Michael W. Ambrose.

A list of the single points of contact for each State and territory is included as Appendix D of this announcement.

G. Availability of Forms and Other Materials

A copy of each form required to submit an application for a Basic Center or Coordinated Networking grant under the Runaway and Homeless Youth Program, and instructions for completing the application, are provided, in Appendices A and B. In addition, the Program Performance Standards and a description of the National Runaway Switchboard are included at the end of this announcement as Appendix C. Addresses of the State Single Points of Contact (SPOCs) to which applicants should submit review copies of their proposals are listed in Appendix D. Title III of Pub. L. 98–473, the Runaway and Homeless Youth Act, 42 U.S.C. 5701 *et seq.*, and the Code of Federal Regulations (CFR) Title 45, Part 1351, Runaway Youth Program may be found in major public libraries and at the regional offices listed in Appendix E at the end of this announcement. Additional copies of this announcement may be obtained from the regional offices or from the information contact person listed at the beginning of the announcement. Further general information may be obtained from the Coordinated Networks listed in Appendix F. A listing of all current multi-year Basic Center grantees, with the project period expiration date of each, is presented in Appendix G.

H. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined below. This review will be conducted in Washington, DC. The review will be conducted by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. These experts will review applications to determine that applicants will conform to the requirements of the Act (see Part II of this announcement) and the Program Performance Standards. Then they will apply the criteria presented in Part III, Section A to assign a score to each application. To avoid conflict of interest, the non-Federal reviewers will be from States other than the one from which applications are being reviewed. The results of the competitive review will be analyzed by Federal staff and taken into consideration by the Associate Commissioner of the Family and Youth Services Bureau who, in consultation with ACYF regional officials, will recommend to the Commissioner the projects to be funded. The ACYF Commissioner will make the final selection of the applicants to be funded. The Commissioner may elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is contemplated. Organizations whose applications have been disapproved will be notified in writing of that decision.

I. Grantee Share of the Project

The Runaway and Homeless Youth Act requires a ten percent match of the Federal funds requested (line 12a of SF Form 424) on all grants funded under this announcement (42 U.S.C. 5716, 45 CFR 1351.13). For example, a total Federal amount of $100,000 (line 12a) must be matched by at least a $10,000 non-Federal share (line 12b), for a total cost of at least $110,000. The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles provided in 45 CFR Part 74, the Department's regulations on the Administration of Grants. For-profit applicants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant. (45 CFR 74.705).

Part IV: Program Narrative and Review Criteria

A. Basic Center Grants

The narrative section should be prepared in accordance with the following criteria, *using the same captions and numbering system.* The point values following each heading indicate the numerical weight each section is worth in the review process. Each applicant will be evaluated on the discussion and documentation contained in the proposal which evidences the ability to provide the services mandated under this program. The program narrative should be clear and concise, and should not exceed 25 single-spaced pages plus such necessary attachments as organization charts, resumes, and letters of agreement and support. The portion of any program narrative that ACYF staff determine as exceeding these limits will not be presented to the independent panel reviewers.

1. *Objectives and Need for This Assistance* (15 points) (4 pages maximum, single spaced).

Provide a concise description documenting the need for services for runaway and homeless youth in the area to be served. These data should be summarized, evaluated and related specifically to the proposed project.

(a) Information should include data on the incidence of runaway and homeless youth in the geographic area to be served including demographics of sex and age; ethnic origin; State(s) of origin; services needed by youth and families; approximate distance that clients have run to the center an analysis of the adequacy of existing services for runaway and homeless youth in the community; and the outcomes anticipated from the services to be provided.

(b) State the connection between the needs identified and the specific program goals and objectives planned or offered by the applicant. The program goals and objectives should be measurable and specific and relate to the Program Performance Standards of the Runaway and Homeless Youth Act (Appendix C).

2. *Results or Benefits Expected (Beneficial Impact)* (10 points) (2 pages maximum, single spaced).

This section should identify the results and benefits to be derived from the implementation of services to runaway and homeless youth and their families under this great program. Specifically, the applicant should describe: the results or benefits anticipated in terms of clients served and the community-at-large (for example: youth reunification with the family, or placement in appropriate living arrangements).

In addition, explain the criteria to be used to evaluate the results or success of the project and to determine if the results and benefits identified are being achieved.

3. *Approach (Project Implementation Plan)* (35 points) (20 pages maximum, single spaced, excluding timetables, charts, supporting documentation or listings.)

a. *Tasks to be performed* (20 points).

This section of the program narrative must describe the specific program services and tasks that would be provided under the proposed project, including:

(i) The services the center provides or would provide to runaway, homeless and other vulnerable youth and their families and how they are or would be provided, including at a minimum: Outreach/community relations; individual intake; case planning with each youth; temporary shelter; individual and/or group counseling; family counseling; service linkages; management of leisure time and recreational activities and alternative placements for youth who cannot return home.

(ii) A description of how shelter services will be provided either directly or indirectly on a 24-hour basis; any applicable local and State licensing requirements and how they have been or will be achieved; and certification that no more than 20 youth will be housed in a single facility with a ratio of staff to youth of sufficient proportion to assure adequate supervision and treatment.

(iii) The procedures that are or will be employed for contacting youths' parents or legal guardians, preferably within 24 hours but not to exceed 72 hours of the time youth enter the program, and a summary of applicable local and State laws regarding parental permission requirements.

(iv) The procedures that are or will be employed for verifying the safe arrival of youth either at home or in an alternative living arrangement.

(v) The procedures that are or will be employed for providing or arranging for aftercare services (the range of services provided to youth who have left the runaway/homeless youth shelter).

Discuss the extent to which the program has or will have the capacity to provide these services, directly or indirectly through linkages with other programs of a similar nature, to those youth who are returned beyond the State in which the applicant center is located.

(vi) A description of how the center has or will link its activities with the National Runaway Switchboard which has been developed to facilitate communication between runaway and homeless youth and their families.

(vii) A description of how the center has or will devleop working relationships with law enforcement, juvenile court, school system, and local public and privte agency personnel including procedures for returning youth who have run away from correctional institutions in accordance with applicable Federal, State and local laws.

(viii) A description of how the center has demonstrated active participation or will participate in local, State and regional networks or coalitions of youth serving agencies or other human services organizations.

b. *Design and Methodology* (10 points).

Identify the specific problem(s), issue(s), and objectives of the proposal and provide a detailed discussion of how the approach provided for under letter "a" will accomplish these project objectives.

c. *Evaluation* (5 points).

Where appropriate, describe in detail the evaluation plans and procedures capable of measuring the degree to which project objectives have been accomplished, including:

(i) Quantitative monthly or quarterly reports of the accomplishments that have been achieved, such as the number of runaway and homeless youth and their families served.

(ii) Identify the kinds of data to be collected and discuss how the project will maintain adequate statistical records profiling the youth and families served; and the procedures that are or will be employed to ensure the confidentiality of this information.

4. *Geographic Location* (5 points).

Give the precise location of the project or area to be served by the proposed project. Maps or other graphic aids may be included. There should be evidence that the center is or will be located in an area which is frequented or easily reached by runaway and homeless youth.

5. *Staffing and Management* (20 points) (5 pages maximum, excluding position descriptions or resumes).

a. *Staffing Pattern* (5 points).

Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contribution to be made by senior staff. Provide an organizational chart and describe the following: How the program is or will be staffed; how staff are or will be selected, supervised and trained; how the organization ensures or will ensure 24-hour accessibility to its services and an adequate youth/adult staff ratio at all times; and how specific roles for youth have or will be defined in planning, policy formation and service delivery.

b. *Competence of Staff* (10 points).

Indicate the qualifications of the project team, the variety of skills to be used, relevant experience, educational background, and the demonstrated ability to produce final results.

(i) Provide position descriptions and resumes or qualifications required for key positions in the program (e.g., the Executive Director, Counseling Supervisor), and a listing of board members, as applicable. Describe how the organization involves or will involve other members of the community and State in its program. Demonstrate that the organization has legal and fiscal viability in accordance with the provisions of the CFR, Title 45, Part 74.

(ii) Describe the recruitment and training efforts for volunteers in the organization, including the roles volunteers have or will have in service delivery, outreach in the community, and as members of the Board of Directors or advisory group.

c. *Adequacy of Resources* (5 points).

Specify the adequacy of the facilities, resources and organizational experience with regard to the tasks of the proposed project. Explain the extent to which the applicant organization has demonstrated experience in accessing other resources which can strengthen support for the existing or proposed center's activities and contribute toward the applicant's ability to remain a viable organization at the expiration of the Federal funding period.

6. *Budget Appropriateness and Reasonableness* (15 points).

Budget (10 points).

Relate the proposed budget to the level of effort required to attain project objectives. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Assurances (5 points).

Applicants should complete the required forms evidencing that they will comply with program requirements provided in the Code of Federal Regulations, Title 45, Part 1351.

Discuss collaborative efforts with other agencies or organizations. Written assurances should be included with the application if available.

B. Coordinated Networking Grants

1. Background

The Coordinated Networking grants are an integral component of the National Runaway and Homeless Youth Program. Their purpose is to strengthen the capacities of runaway and homeless youth centers to provide services to runaway and homeless youth and their families and to expand the coordination of services and resources between and among these programs. This is accomplished through the provision of technical assistance and short-term training along with programmatic, operational and informational assistance to both Title III grantees and to other youth-serving agencies which do not receive Runaway and Homeless Youth Act funds but which serve the same populations.

Presently, ten organizations are operating Coordinated Networking Grants, one in each HHS region, serving all the States included in each region (see listing in Appendix F). In FY 1988, ten grants will be awarded under the Coordinated Networking Grants activity. Applicants must be organizations already established as networks (see definition in Part III, Section A, #2). The applicant organizations must have demonstrated experience in providing technical assistance and short-term training to community-based organizations serving runaway and homeless youth and their families.

All applications received in response to this section of the announcement will be competitively reviewed and evaluated on a national basis. All grantees shall be required to document in quarterly reports the specific outcomes of the networking activities supported by this grant.

2. Overview of Coordinated Networking Grants

Runaway and homeless youth centers need assistance in their efforts to meet the needs of runaway and homeless youth and their families. Coordinated networks are a cost-effective method for strengthening centers' capacity and expanding program expertise to meet these needs. Over the past several years the networking grants funded have been instrumental in improving the responsiveness of and resources available to the existing service delivery systems which serve runaway and homeless youth.

The specific objectives of the service networks will be to serve as regional level mechanisms for providing programmatic and operation-related information; facilitating the exchange of expertise between and among runaway and homeless youth centers*; and strengthening runaway and homeless youth centers' capabilities by conducting short-term training and on-site technical assistance.

Most notably, networks have been responsible for:

- Developing extensive resource libraries;
- Providing planned and emergency technical assistance to member agencies, especially new (less than two years old) programs which serve runaway and homeless youth;
- Acquiring and/or facilitating the acquisition of computers for member agencies which improved their data collection, client tracking and administrative capabilities;
- Sponsoring and co-sponsoring regional and local conferences to address service delivery and population issues; to provide skill building workshops for grantees; and to educate local communities and State legislators to the needs of runaway and homeless youth and their families;
- Providing program information and feedback to the HHS regional and headquarter offices regarding trends and issues pertinent to serving runaway and homeless youth and their families;
- Serving as an effective conduit for transmitting program guidance and information on national initiatives to Federal grantees and other member agencies in a timely manner.

The networking grantees are expected to continue strengthening the long-term capabilities of runaway and homeless youth centers while encouraging the implementation of new program practices and methods; publicizing and supporting national initiatives; disseminating the products of demonstration and discretionary efforts; and providing short-term training and technical assistance. Additionally, each applicant is expected to develop objectives and methods to improve the inter-State communications and activities which will strengthen interdependence among the States in a region and benefit the region as a whole. Regional meetings which promote multi-State resource sharing and sponsor cognitive training events and staff exchanges to enhance the

3. Review Criteria

All Coordinated Networking Grant applications must be complete and meet the deadline. They will be reviewed and evaluated against the following criteria:

Criterion 1: Objective and Need (20 points). The applicant clearly documents the need for the proposed activities to be undertaken. Objectives and purposes of the project are described in measurable detail for a three-year period, presented year by year.

Criterion 2: Identified Outcomes (20 points). Specific quantifiable outcomes are identified (e.g., an increase in the number of centers and/or States included in and benefitting from the network activities). Total: 100 points.

Criterion 3: Soundness of Approach (35 points) (20 pages maximum, single-spaced excluding supporting documentation) clear discussion of the feasibility of the proposed effort is provided. The ability of the applicant network to achieve the proposed objectives is described with specific attention given to concrete activities. The level of effort required is discussed and is adequate to conduct the proposed activities. A clearly stated workplan and a staff loading chart for task accomplishments are provided.

Criterion 4: Budget Appropriateness and Reasonableness (10 points). The proposed budget is commensurate with the level of effort needed to accomplish

* Federally and non-Federally supported centers.

the proposed objectives. The cost of the proposed activity is reasonable in relation to the value of the anticipated results. The contribution of the collaborative agencies or organizations is assured in writing and included with the application when it is submitted. The participation of agencies other than the applicant, such as network member agencies, is evidenced by a letter indicating agreement to participate. (10 points)

Criterion 5: Staffing and Management (10 points). The proposed staff are well qualified to carry out the proposed activity. The division of responsibilities is appropriate to carry out workplan tasks. The applicant's facilities and/or staff available to achieve the proposed objectives are adequate.

Criterion 6: Supporting Documentation (5 points). Applicants should attach any additional materials, such as letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies, which would give further support to the application.

Part V Instructions for Completing the Application

A. Contents of Application.

Each copy of the application must contain the following items in the order listed:

1. Standard Form 424 (page 1).
2. Part II—Project Approval Information (page 2).
3. Part III—Budget Information (pages 3, 4).
4. Part IV—Project Narrative (pages 5 and following, as appropriate).
5. Part V—Plans and Assurances (paginate as appropriate).
6. Application Certification for Profit-Making Organizations (paginate as appropriate).
7. Supporting Documents (if any, paginate as appropriate).

B. Instructions for Preparing Application

Prepare your application in accordance with the following instructions:

1. Standard Form 424 (page 1). Follow instructions in Appendix B.
2. Part II—Project Approval Information (page 2). Self-explanatory.
3. Part III—Budget Information (pages 3–4). Follow instructions in Appendix B.
4. Part IV—Project Narrative (pages 5 and following). Basic Center grants program narrative instructions are in Section A. Coordinated Networks program narrative instructions are in Section B.
5. Plans and Assurances.

(1) HHS–SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964. Self-explanatory.

(2) HHS–SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, as amended. Self-explanatory.

6. Application Certification for Profit-Making Organizations. Self-explanatory.
7. Supporting Documentation.

Each applicaton will be copied by the Government in order to provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements must be imposed.

Applicants may attach *only photocopies* (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies, which would give further support to the application. *Resumes must be limited to one page.*

The absolute maximum for supporting documentation is 10 pages, exclusive of letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers. Applicants may include as many letters of support or agreement as are appropriate.

Note: Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.

C. Application Submission

To be considered for a grant, an applicant must submit one signed original and two copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy should be staplied (back and front) in the upper left corner. All copies of a single application should be submitted in a single package.

The program announcement number (13623–88–1) must be clearly identified on the application (SF 424, box 6b). Mark the symbol "BC" for Basic Center or "NET" for Coordinated Networking in large letters with a red marker pen in the upper right hand corner. Three extra copies of the SF 424 apart from the application copies are requested. Applicants should note that there is no penalty imposed if the additional requested copies are not provided. The special identifiers, "BC" or "NET" should be written on these extra copies as well.

1. Closing Date for the Receipt of Applications

The closing date for receipt of applications under this announcement is: May 3, 1988. Applications must be mailed or hand delivered to: HHS/Division of Grants and Contracts Management, 200 Independence Avenue, SW., Room 341–F, Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS–88–ACYF/RHYP.

2. Deadline for Submission of Applications

a. Hand delivered applications will be accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date, and received by the granting agency in time to be considered during the competitive review and evaluation process.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. Late applications. Applications which do not meet the criteria in paragraph A of this section are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

c. Extension of deadline. HDS may extend the deadline for all applicants because of acts of God such as floods or hurricanes, when there is a widespread disruption of the mails or when HDS determines an extension to be in the best interests of the government. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(Catalog of Federal Domestic Assistance Number 13.623, Runaway and Homeless Youth Program.)

Dated: February 10, 1988.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: February 22, 1988.

Sydney Olson,

Deputy Assistant Secretary for Human Development Services.

Appendix A: Forms and Assurances
Appendix B: Instructions for Applying for Federal Assistance From HDS Programs
Appendix C: Program Performance Standards
Appendix D: Executive Order 12372—State Single Points of Contact
Appendix E: Regional Youth Contacts
Appendix F: Coordinated Networks
Appendix G: Runaway and homeless Youth Grantees, FY 1987

BILLING CODE 4630-01-M

APPENDIX A

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box) ☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☐ APPLICATION
/_/ BASCTR /_/ NETWRKG

2. APPLICANT'S APPLICATION IDENTIFIER — a. NUMBER; b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER (NOTE TO BE ASSIGNED BY STATE) — a. NUMBER; b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA) — a. NUMBER 13.623 ; MULTIPLE ☐ ; b. TITLE Runaway & Homeless Yt

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify)
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	$ .00

13. CONGRESSIONAL DISTRICTS OF: a. APPLICANT; b. PROJECT

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify)
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐
OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE; b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$ .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. TOTAL	$ .00

29. ACTION DATE► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

SECTION IV–REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

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PART II
PROJECT APPROVAL INFORMATION

Item 1
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No

Name of Governing Body _____
Priority Rating _____

Item 2
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No

Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No

Name of Approving Agency _____
Date _____

Item 4
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No

Check one State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 5
Will the assistance requested serve a Federal installation?
_____ Yes _____ No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No

See instructions for additional information to be provided.

Item 8
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No

See instructions for additional information to be provided.

OMB NO. 0348-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15 TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

   Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated _____ _____
(Applicant)

By _____
(President, Chairman of Board, or comparable authorized official)

_____

_____
(Applicant's mailing address)

HDS GRANTS MANAGEMENT

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

_____

Name of Designee(s) — Type or Print

Name of Recipient — Type or Print	Street Address
(IRS) Employer Identification Number	City
Area Code — Telephone Number	State Zip

I certify that the above information is complete and correct to the best of my knowledge.

Date	Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

PLEASE RETURN ORIGINAL TO: Office for Civil Rights, Room 5627/B North Building, 330 Independence Avenue, N.W., Washington, D.C. 20201.

RETURN COPY TO: Grants Management Office

HHS-641 (7/84) REV.)
GPO 906-714

HDS GRANTS MANAGEMENT

O.M.B. No. 85-R-0359
EXPIRES 10-31-81

DEPARTMENT OF HEALTH AND HUMAN SERVICES
PROJECT BY PROJECT-RESEARCH AWARDS
COST SHARING AGREEMENT

Note: This form is used only when the applicant does *not* have an institutional cost-sharing agreement with HHS. Questions about the form should be directed to the HHS awarding office's grants management office.

NAME OF HHS/HDS AWARDING OFFICE _____

APPLICATION OR AWARD NUMBER *(if known)* _____

NAME AND ADDRESS OF APPLICANT ORGANIZATION _____

_____

_____

PROPOSED PROJECT PERIOD: from _____ to _____

TITLE OF PROJECT _____

_____

AGREEMENT: In order to satisfy HHS cost-sharing requirements, _____

_____ (name of applicant organization)

agrees to bear at least _____ percent of the total cost of the above project.

Total project cost is the sum of the total allowable direct and indirect cost incurred by the recipient and sub-recipients or cost-type contractors, plus the value of any third party in-kind contributions which benefit the project. These amounts will be calculated according to the rules in HHS grant administration regulations at 45 CFR Part 74.

If the project period consists of more than one budget period, the agreed-upon rate will apply to the project period as a whole, including any non-competitive extensions, but not necessarily to each individual budget period.

If HHS stops funding this project prior to the close of the originally agreed-upon project period, the rate will apply to the actual period of support.

If the project period is extended competitively, another cost-sharing agreement will be negotiated.

SIGNATURE AND TITLE OF AUTHORIZED APPLICANT OFFICIAL _____

_____

DATE _____

HHS FORM 490 (JAN. 1981)

HDS GRANTS MANAGEMENT BRANCH

APPLICATION CERTIFICATIONS FOR PROFIT MAKING ORGANIZATIONS

Applicants who are For Profit Organizations shall complete the following certification review when applying for HDS Financial Assistance.

1. Small Business Certification

The applicant ( ) is, ( ) is not, a small business concern. A small business concern is defined as a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.

2. Minority Business Enterprise Certification

The applicant ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a business, at least 51 percent of which is owned, controlled, and managed by minority group members who are citizens of the U.S. In case of a corporation, 51 percent of all classes of voting stock of such corporations must be owned by an individual(s) determined to be minority. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, Native Americans, (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia, or Taiwan) and members of other groups designated from time to time by the Small Business Administration according to the procedures set forth at 13 CFR Part 124.1.

3. Woman-Owned Business Certification

The applicant ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

4. Small Business Innovation Research Act

This application ( ) is, ( ) is not, submitted under the Small Business Innovation Research Act.

For Profit Organizations must submit this form with the completed application.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION

☐ ORIGINAL ☐ FOLLOWUP ☐ REVISION

☐ GRANT ☐ CONTRACT ☐ FELLOW ☐ OTHER

☐ NEW ☐ RENEWAL ☐ CONTINUATION

APPLICATION IDENTIFICATION NUMBER *(If known)*

STATEMENT OF POLICY Safeguarding the rights and welfare of subjects at risk in activities supported under grants and contracts from DHHS is primarily the responsibility of the institution which receives or is accountable to DHHS for the funds awarded for the support of the activity. In order to provide for the adequate discharge of this institutional responsibility, it is the policy of DHHS that no activity involving human subjects to be supported by DHHS grants or contracts shall be undertaken unless the Institutional Review Board has reviewed and approved such activity, and the institution has submitted to DHHS a certification of such review and approval, in accordance with the requirements of Public Law 93-348, as implemented by Part 46 of Title 45 of the Code of Federal Regulations, as amended, (45 CFR 46). Administration of the DHHS policy and regulation is the responsibility of the Office for Protection from Research Risks, National Institutes of Health, Bethesda, MD 20205.

1. TITLE OF PROPOSAL OR ACTIVITY

2. PRINCIPAL INVESTIGATOR/ACTIVITY DIRECTOR/FELLOW

3. DECLARATION THAT HUMAN SUBJECTS EITHER WOULD OR WOULD NOT BE INVOLVED

☐ A. NO INDIVIDUALS WHO MIGHT BE CONSIDERED HUMAN SUBJECTS, INCLUDING THOSE FROM WHOM ORGANS, TISSUES, FLUIDS, OR OTHER MATERIALS WOULD BE DERIVED, OR WHO COULD BE IDENTIFIED BY PERSONAL DATA, WOULD BE INVOLVED IN THE PROPOSED ACTIVITY. (IF NO HUMAN SUBJECTS WOULD BE INVOLVED, CHECK THIS BOX AND PROCEED TO ITEM 7. PROPOSALS DETERMINED BY THE AGENCY TO INVOLVE HUMAN SUBJECTS WILL BE RETURNED.)

☐ B. HUMAN SUBJECTS WOULD BE INVOLVED IN THE PROPOSED ACTIVITY AS EITHER: ☐ NONE OF THE FOLLOWING, OR INCLUDING: ☐ MINORS, ☐ FETUSES, ☐ ABORTUSES, ☐ PREGNANT WOMEN, ☐ PRISONERS, ☐ MENTALLY RETARDED, ☐ MENTALLY DISABLED. UNDER SECTION 6. COOPERATING INSTITUTIONS, ON REVERSE OF THIS FORM, GIVE NAME OF INSTITUTION AND NAME AND ADDRESS OF OFFICIAL(S) AUTHORIZING ACCESS TO ANY SUBJECTS IN FACILITIES NOT UNDER DIRECT CONTROL OF THE APPLICANT OR OFFERING INSTITUTION.

4. DECLARATION OF ASSURANCE STATUS/CERTIFICATION OF REVIEW

☐ A. THIS INSTITUTION HAS NOT PREVIOUSLY FILED AN ASSURANCE AND ASSURANCE IMPLEMENTING PROCEDURES FOR THE PROTECTION OF HUMAN SUBJECTS WITH THE DHHS THAT APPLIES TO THIS APPLICATION OR ACTIVITY. ASSURANCE IS HEREBY GIVEN THAT THIS INSTITUTION WILL COMPLY WITH REQUIREMENTS OF *DHHS Regulation 45 CFR 46*, THAT IT HAS ESTABLISHED AN INSTITUTIONAL REVIEW BOARD FOR THE PROTECTION OF HUMAN SUBJECTS AND, WHEN REQUESTED, WILL SUBMIT TO DHHS DOCUMENTATION AND CERTIFICATION OF SUCH REVIEWS AND PROCEDURES AS MAY BE REQUIRED FOR IMPLEMENTATION OF THIS ASSURANCE FOR THE PROPOSED PROJECT OR ACTIVITY.

☐ B. THIS INSTITUTION HAS AN APPROVED GENERAL ASSURANCE (DHHS ASSURANCE NUMBER _____) OR AN ACTIVE SPECIAL ASSURANCE FOR THIS ONGOING ACTIVITY, ON FILE WITH DHHS. THE SIGNER CERTIFIES THAT ALL ACTIVITIES IN THIS APPLICATION PROPOSING TO INVOLVE HUMAN SUBJECTS HAVE BEEN REVIEWED AND APPROVED BY THIS INSTITUTION'S INSTITUTIONAL REVIEW BOARD IN A CONVENED MEETING ON THE DATE OF _____ IN ACCORDANCE WITH THE REQUIREMENTS OF THE *Code of Federal Regulations on Protection of Human Subjects (45 CFR 46)*. THIS CERTIFICATION INCLUDES, WHEN APPLICABLE, REQUIREMENTS FOR CERTIFYING FDA STATUS FOR EACH INVESTIGATIONAL NEW DRUG TO BE USED (SEE REVERSE SIDE OF THIS FORM).

INSTITUTIONAL REVIEW BOARD HAS DETERMINED, AND THE INSTITUTIONAL OFFICIAL SIGNING BELOW CONCURS THAT:

EITHER ☐ HUMAN SUBJECTS WILL NOT BE AT RISK; OR ☐ HUMAN SUBJECTS WILL BE AT RISK.

ND 6. SEE REVERSE SIDE

7. AME AND ADDRESS OF INSTITUTION

8. TITLE OF INSTITUTIONAL OFFICIAL	TELEPHONE NUMBER
SIGNATURE OF INSTITUTIONAL OFFICIAL	DATE

HHS-596 (Rev. 5-80)

ENCLOSE THIS FORM WITH THE PROPOSAL OR RETURN IT TO REQUESTING AGENCY.

5. INVESTIGATIONAL NEW DRUGS - ADDITIONAL CERTIFICATION REQUIREMENT

SECTION 46.17 OF TITLE 45 OF THE Code of Federal Regulations states, "Where an organization is required to prepare or to submit a certification and the proposal involves an investigational new drug within the meaning of The Food, Drug, and Cosmetic Act, the drug shall be identified in the certification together with a statement that the 30-day delay required by 21 CFR 130.3(a)(2) has elapsed and the Food and Drug Administration has not, prior to expiration of such 30-day interval, requested that the sponsor continue to withhold or to restrict use of the drug in human subjects, or that the Food and Drug Administration has waived the 30-day delay requirement; provided, however, that in those cases in which the 30-day delay interval has neither expired nor been waived, a statement shall be forwarded to DHHS upon such expiration or upon receipt of a waiver. No certification shall be considered acceptable until such statement has been received."

INVESTIGATIONAL NEW DRUG CERTIFICATION

TO CERTIFY COMPLIANCE WITH FDA REQUIREMENTS FOR PROPOSED USE OF INVESTIGATIONAL NEW DRUGS IN ADDITION TO CERTIFICATION OF INSTITUTIONAL REVIEW BOARD APPROVAL, THE FOLLOWING REPORT FORMAT SHOULD BE USED FOR EACH IND: (ATTACH ADDITIONAL IND CERTIFICATIONS AS NECESSARY).

— IND FORMS FILED: ☐ FDA 1571, ☐ FDA 1572, ☐ FDA 1573

— NAME OF IND AND SPONSOR _____

— DATE OF 30-DAY EXPIRATION OR FDA WAIVER
(FUTURE DATE REQUIRES FOLLOWUP REPORT TO AGENCY) _____

— FDA RESTRICTION _____

— SIGNATURE OF INVESTIGATOR _____ DATE _____

6. COOPERATING INSTITUTIONS - ADDITIONAL REPORTING REQUIREMENT

SECTION 46.16 OF TITLE 45 OF THE *Code of Federal Regulations* IMPOSES SPECIAL REQUIREMENTS ON THE CONDUCT OF STUDIES OR ACTIVITIES IN WHICH THE GRANTEE OR PRIME CONTRACTOR OBTAINS ACCESS TO ALL OR SOME OF THE SUBJECTS THROUGH COOPERATING INSTITUTIONS NOT UNDER ITS CONTROL. IN ORDER THAT THE DHHS BE FULLY INFORMED, THE FOLLOWING REPORT IS REQUESTED WHEN APPLICABLE.

USE FOLLOWING REPORT FORMAT FOR EACH INSTITUTION OTHER THAN GRANTEE OR CONTRACTING INSTITUTION WITH RESPONSIBILITY FOR HUMAN SUBJECTS PARTICIPATING IN THIS ACTIVITY: (ATTACH ADDITIONAL REPORT SHEETS AS NECESSARY).

INSTITUTIONAL AUTHORIZATION FOR ACCESS TO SUBJECTS

— SUBJECTS: STATUS (WARDS, RESIDENTS, EMPLOYEES, PATIENTS, ETC.) _____

NUMBER _____ AGE RANGE _____

NAME OF OFFICIAL (PLEASE PRINT) _____

TITLE _____ TELEPHONE _____

NAME AND ADDRESS OF COOPERATING INSTITUTION _____

— OFFICIAL SIGNATURE _____

NOTES: *(e.g., report of modification in proposal as submitted to agency affecting human subjects involvement)*

HHS-596 (Rev. 5-80) (Back)

BILLING CODE 4630-01-C

Appendix B—Instructions for Applying for Federal Assistance From HDS Programs

Introduction

Use of Forms

The forms included in this "kit" shall be used to apply for all new discretionary grants and cooperative agreements awarded by the Office of Human Development Services. They shall also be used to request supplemental assistance, proposed changes or amendments, and request continuation or refunding for previously approved grants or cooperative agreements from the Office of Human Development Service. An original and two copies of the forms should be submitted to the responsible grants management office. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Applications

Applicants for new awards and competing continuations are required to submit a complete application which consists of Parts I (SF–424) through Part V. Applicants for new projects must include completed Standard Forms 441, Civil Rights Assurance, and HHS—641, Rehabilitation Act Assurance. Applicants for additional funding (such as a non-competing continuation or supplemental grant) or amendments to a previously submitted application should include only affected pages. Previously submitted pages whose information is still current need not be resubmitted. Additionally, applicants for certain HDS programs may be subject to Executive Order 12372, Intergovernmental Review of Federal Programs (see Attachments 1 and 2). These applicants must follow the instructions provided relative to Executive Order 12372 coverage where appropriate, as listed on page 11.

Submission of Applicants

(1) Non-competing Continuation Grants—Applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects and Competing Continuations—Applicants for Assistance to support new projects or for competing continuations should refer to program announcements for information regarding deadline dates for submission of forms.

Instructions for Completion of Part I (SF–424)

Section I

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use Section IV. An explanation follows for each item.

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A–102 and HDS program instructions. Use of the SF–424 as a Notice of Intent is a State option. HDS does not require Notice of Intent.

2a. Applicant's own control number, if desired.

2b. Date application is signed.

3a. For a program covered by Executive Order 12372, enter the number assigned, if any, by the State Single Point of Contact. Applications submitted to OHDS must contain this identifier, if provided by the State Single Point of Contact. Note: Item 22 of this form must be completed for programs covered by E.O. 12372.

3b. Date identifier is assigned by State.

4a.–4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION. COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER AND DHHS ENTITY NUMBER.

If an individual's name and/or title is desired on the payment instrument, the name/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by the Internal Revenue Service. If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Entity Number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number, enter PIN in parenthesis () beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint funding) check "multiple" and explain in Section IV, remarks. If unknown, cite Public Law or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance Abbreviate if necessary.

7. Enter title and appropriate description of project. For Notification of Intent, continue in Section IV if necessary to convey proper description. If project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than listed, specify type on "Other" line e.g., Council of Governments. *Note:* Non-profit organizations which have not previously received HDS program support must submit proof of nonprofit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit is affected, list it rather than subunits.

10. Identify estimated number of persons *directly* benefiting from project, as described in the program narrative.

11. All applicants for new, competing continuation and non-competing continuation grants should enter the letter "A". And applicants for supplemental grant funding should enter the letter "B". For proposed changes or amendments, enter "E".

12. Enter amount requested or to be contributed during the initial funding/budget period by each contributor. Where allowable the value of in-kind contributions should be included. If the action is a change in dollar amount of existing grant (a revision or augumentation), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding use totals and show program breakdowns in remarks. Item definitions: 12a, amount requested from Federal Government; 12b, amount from local government, if applicant is not a local government; 12e, amount from any other sources, explain in Section IV.

13a. Self explanatory. Enter the appropriate Congressional District number(s). If the State has only one Congressional District, enter "at large".

13b. Enter the district(s) where most of the actual work will be accomplished. If city-wide or State-wide covering

several districts, write "city-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

A. *New* A submittal for the first time for a new project or project period (includes competing continuations).

B. *Renewal.* Not applicable to HDS grant programs.

C. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

D. *Continuation.* Support for a non-competing continuation project after the initial funding/budget period and within the approved project period.

E. *Augumentation.* (Referred to elsewhere in these instructions and in other HDS publications as a "supplemental"). An application for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, explain in Part IV.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14C), or augumentations (Supplements) (Item 14E).

18. Date application/preapplication must be submitted to HDS in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Enter existing HDS award number from item 3 of the Notice of Financial Assistance Awarded if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Section II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b. An explanation follows for each item.

22a. Complete if application is subject to Executive Order 12372 (State review and comment). Note: All written comments submitted by or through the State Contact must be attached, if available. Applicants are advised of the delay of funding near the end of the fiscal year, if a timely notification to the State Contact is not made.

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory. *Note:* The authorized representative signature cannot be signed by designee.

Note: Applicant Completes only Sections I and II. Section III is completed by Federal Agencies.

Instructions for Completion of Part II

Negative answers will not require an explanation unless the responsible HDS program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained. If the application is covered by Executive Order 12372, this item should be completed.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not availabe, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations").

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions, if additional data is needed.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source. If this application is for a non-competing continuation, a supplement or a revision, do not refer to the prior or current HDS award.

Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activities. Generally, HHS funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need be completed. However, Head Start, funded by the Administration for Children, Youth and Families requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1–4 under Section A and Columns 1–4 under Section B).

Since HDS programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should reflect the need for Federal Assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A—Budget Summary

Lines 1–4

Col. (a): For applications pertaining to a single grant program and *not* requiring a functional activity or program account breakout enter on Line 1 under Column (a) the Federal Domestic Assistance Catalog program title (See attached listing). For "Head Start", enter the activities (program accounts) name for which funds are being requested on separate lines.

(Col. (b): Enter appropriate Catalog of Federal Domestic Assistance number. For "Head Start", enter the activities (program accounts) number for which funds are being requested on separate lines.

Col. (c)–(g): For *new applications*, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period.

For *non-competing*, or *competing continuation applications*, enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the current

budget period. Enter in columns (e), (f), and (g) the appropriate amounts needed to support the project for the new budget period. (Column (g) should equal the total of Column (e) and Column (f).)

For *augumentation* (supplements) *and changes to existing grants*, leave Columns (c) and (d) blank and enter in Columns (e) and (f) the amount of increase or decrease of Federal and non-Federal funds, as appropriate. Enter in Column (g) the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Columns (g) should not equal the sum of the amounts in Columns (e) and (f).

Line 5

Enter the totals for all columns completed.

Section B—Budget Categories

Column 1–5

In the Column heading (1) through (4), enter the same titles of the grant programs and/or program accounts shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity (program account) enter in Columns (1) through (4) enter the total requirements for *Federal funds* by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74 and the HDS Grants Administration Manual.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies. (See Section F, Line 21, for additional requirements).

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, F.I.C.A., retirement insurance, etc.

Travel—Line 6c: Enter total costs of out-of-town travel (travel requiring per diem) for employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all equipment to be acquired by the project. "Equipment" means an article of tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of equipment, provided that such a definition would at least include all tangible personal property as defined in the preceeding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.), and, (2) contracts agreements with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization; the purpose of the contract; statement; statement (scope) of work; period of performance; and the estimated dollar amount of the award. If the name of contractor, scope of work and estimated total is not available or has not been negotiated, include in Line h, "Other". (Note: Whenever the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information reference in the applicable instructions. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of alterations or renovation. Provide narrative justification and break-down of costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the totals of Lines 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none". This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Health and Human Services. Applicant should enclose a copy of the current negotiated agreement. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments, the reimbursement of indirect costs will be limited to the lesser of actual indirect costs of 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alteration and renovations. *It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.*

Total—Line 6k: Enter the amounts of Lines 6(i) and 6(j). For all new competing and non-competing continuation applications, the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all supplements or changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in Section A, Line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show the nature and source of income, in the program narrative statement.

Section C—Non-Federal Resources

Line 8–11: Enter amounts of non-Federal resources that will be used to support the project. Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If in-kind is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only), including number of square feet and value assigned per square foot; and

(3) Determination of depreciation or use allowance for grantee-owned space; [include statement specifying whether space was purchased or constructed, totally or in part with federal funds for items (2) and (3)].

(4) Type and value of other in-kind contributions expected.

Column (a): Enter the program title or activities (program accounts) as in Column (a) Section A.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the totals of Columns (b), (c), and (d).

Line 12—Enter total of each of Columns (b) through (e). The amount in Column (e) should be equal to the amount of Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Projects

Line 16–19—Enter in Column (a) the same program title or activities (program accounts) as in Column (a) Section A. For new or competing continuation or non-competing continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding budget periods (usually in years). Do not enter current year budget amount; enter second, third, fourth, and fifth year budget estimate needs. This Section need not be completed for Headstart applicants with indefinite project periods or for revisions or supplements for the current budget period which do not increase the general level of support.

Line 20— Enter the totals of each of the Columns (b) through (e).

Section F—Other Budget Information

Line 21—Use this space to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the HDS program office. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative.

2. Travel requiring per diem and foreign travel, number of trips traveled, destinations, length of stay, transportation cost, subsistence allowance, purpose of trip.

3. A list of all equipment (See Part III, Section B, Line 6d) and estimated cost of each item to be purchased. Need for equipment must be supported in program narrative.

4. Contractual: Major items or groups of smaller items; and

5. Other: group and major categories, e.g., consultants, local transportation, space rental, training allowances, staff training, computer equipment, etc. Provide a complete break-down of all costs that make up this category.

Line 22— Enter the type of indirect cost rate (provisional, final, fixed or predetermined) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense. Also, enter the date HDS approved the rate, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations required or deemed necessary.

Attachment 1—Executive Order 12372 Coverage

1. General

Executive Order 12372, "Intergovernmental Review of Federal Programs," provides for the State and local government coordination and review of proposed Federal financial assistance. Certain applicants for HDS grants must comply with the provisions of E.O. 12372 and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." The following table provides a listing of all HDS assistance programs identified by Catalog of Federal Domestic Assistance Number (CFDA), and shows those programs and activities which are covered by E.O. 12372 and those which are exempt from coverage.

Federally recognized Indian Tribes are exempt from the provisions and requirements of E.O. 12372 (see 48 FR 29196 dated June 24, 1983).

States design their own processes for reviewing and commenting on proposed Federal assistance under certain Federal programs. States adopting a review process under the E.O. have designated a State official or organization to act as the State's "Single Point of Contact" (SPOC) for sending official State recommendations to HDS. Applicants with projects subject to E.O. 12372 review must adhere to the requirements of their State processes.

2. Procedures for New and Competing Continuation Applicants

E.O. 12372 requires applicants for new and competing continuation grants and cooperative agreements to coordinate their plans at the State and local levels through the State SPOC. Names and addresses of the State SPOC are listed in the *Federal Register* announcement soliciting applications or in the application kit. A current listing can also be obtained from the regional or headquarters grants management office. Potential applicants should contact their State SPOC at the earliest feasible time and notify them of their intent to apply for Federal assistance. Many State offices have their own notification forms and instructions, and applicants should obtain this material directly from them.

Applications covered by E.O. 12372 must show E.O. 12372 certification in Item 22 on Standard Form 424. HDS will notify the State SPOC of any application covered by E.O. 12372 that does not indicate that the State contact has had an opportunity to review it. Therefore, failure to notify the State of the proposed application to HDS may result in a delay of funding.

State SPOC offices have sixty (60) days after the HDS deadline date for the receipt of applications in which to review and resolve problems with the applicant and submit comments to HDS.

3. Procedures for Non-Competing Continuation Applications

Applicants for non-competing continuations of awards covered by E.O. 12372 must contact the State SPOC regarding their application at the earliest possible time. Applications submitted to HDS must show the E.O. 12372 certification in Item 22 on the Standard Form 424. HDS will notify the State SPOC of the receipt of any covered program application which has no indication that the State process has had an opportunity for review.

The closing date for submission of State comments is thirty (30) days after the deadline date for receipt of applications. Applicants are advised to make clear to the SPOC that they are applying for a non-competing continuation award with a thirty day rather than a sixty (60) day review period.

Attachment 2—HDS Programs and Activities Covered by Executive Order 12372

Catalog of Federal domestic assistance No.	Discretionary grants	Mandatory or formula grants
13.600	Head Start—Basic Head Start Program, Research, Training and Technical Assistance, Demonstration, and Pilot Projects.	
13.623	Runaway Youth—All projects	
13.630		Development Disabilities—Basic Support and Advocacy.
13.631	Development Disabilities, Special Projects	
13.633		Aging—Title III-B, Grants for Supportive Services and Senior Centers.
13.635		Aging—title III-C, Nutrition Services.
13.645		Child Welfare Services—Title IV-B State Grants.
13.646		Work Incentive Program (WIN).
13.669		State Child Abuse and Neglect Prevention and Treatment.
13.670	Child Abuse and Neglect, Prevention and Treatment—All Projects	
13.608	Child Welfare Research and Demonstration Section 426 of Social Security Act (SSA).	
13.612	Native American Programs—Financial Assistance	
13.632	Development Disabilities—University Affiliated Facilities and Satelite Centers.	
13.647	Social Services Research and Demonstration—Section 1110 of SSA	
13.648	Child Welfare Services (426) Training	
13.652	Adoption Opportunities—Research and Demonstration	
13.655	Aging—title VI Grants to Indian Tribes	
13.658		Title IV-E—Foster Care.
13.659		Title IV-E—Adoption Assistance.
13.661	Native American Programs—Research, Demonstration, and Evaluation	
13.662	Native American Programs—Training and Technical Assistance	
13.667		Social Services Block Grant.
13.668	Aging—Title IV Research, Demonstration, and Training	

Appendix C—Program Performance Standards

I. Overview of Program Performance Standards

The program performance standards established by the Bureau for its funded centers relate to the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served. The program performance standards, and the related criteria and indicators, as initially published in March 1977, were developed by the Bureau through a functional analysis of the service and administrative components of the runaway youth projects, and were revised based upon the comments and feedback provided by the FY 1975 funded projects; they have subsequently been further revised, based upon the experience of the Bureau and its funded centers in their implementation. The standards relate to the basic program components enumerated in Section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act.

The terms "program performance standard," "criterion," and "indicators" are used throughout both the instrument and the instructions. These terms are defined as follows:

Program Performance Standard: The general principle against which a judgment can be made to determine whether a service or an administrative component has achieved a particular level of attainment.

Criterion: A specific dimension or aspect of a program performance standard which helps to define that standard and which is amenable to direct observation or measurement.

Indicator: The specific documentation which demonstrates whether a criterion (or an aspect of a criterion) is being met and thereby the extent to which a specific aspect of a standard is being met.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the regional ACYF specialist and/or staff from the Office of Fiscal Operations will also review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards (and the Program Performance Standards Self-Assessment Instrument) are designed to serve as a developmental tool, and are to be employed by both the project staff and the regional ACYF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

II. Program Performance Standards and Criteria

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach

The project shall conduct outreach efforts directed towards community agencies, youth and parents.

2. Individual Intake Process

The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter

The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any givern time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling

The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling

The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages

The project shall establish and maintain linkages with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangments, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services

The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and idividuals.

8. Recreational Program

The project shall provide a recreational-leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition

The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian, and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not accompanied home or to an alternative living arrangement by the parent(s) or legal guardian, project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development

Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid and volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation

The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files

The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth shall, at a minimum, include an intake form which minimally contains the basic background information required by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian except to project staff, to the funding agency(ies) and its(their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. Ongoing Center Planning

The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional)

It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under 13.

III. National Runaway Switchboard Project Description

The National Runaway Switchboard/National Communication System is a confidential telephone information, referral and crisis counseling service to runaway and otherwise homeless youth and their families in the United States, including Alaska and Hawaii. It is also an invaluable technical resource to assist youth-serving agencies in delivering more effective services by facilitating communication among service providers about specific cases. In essence, the National Communications System is designed to provide a neutral and available channel of communication between runaway and homeless youth and their families and to refer runaway and otherwise homeless youth and their families to the appropriate agency for assistance with their immediate crisis as well as working toward resolving their long-term problems. The National Runaway Switchboard (NRS) has become a major conduit for the reunification of runaway youth and their families. Also for over the past two years, the NRS has served as the National Youth Suicide Hotline, providing crisis intervention counseling and referral services to youth and their families.

The significant reasons for the development of the NRS are: (1) The interstate nature of the runaway and homeless youth problem, and (2) the increased vulnerability of youth to various forms of exploitation when they are away from home and/or in unfamiliar environments.

Approximately 2.26 million youth have been served by NRS from 1975 to the present. The current grant to operate NRS is held by Metro Help, Inc., 3080 N. Lincoln, Chicago, Illinois 60614; Beverly A. Edmonds, Executive Director telephone: (312) 880–9860.

Appendix D—Executive Order 12372—State Single Points of Contact

Alabama: Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

Alaska: None

Arizona: Department of Commerce, State of Arizona

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas: Joe Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California: Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado: State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut: Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware: Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida: Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia: Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW—Rm. 608, Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii: Roger A. Ulveling, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804. For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085

Idaho: None

Illinois: Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana: Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa: A. Thomas Wallace, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3864

Kansas: Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Rm. 152–E, State Capitol Bldg., Topeka, Kansas 66612, Tel. (913) 296–2436

Kentucky: Bob Leonard, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana: Colby S. La Place, Assistant Secretary, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 342–9790

Maine: State Planning Office, Attn: Intergovernmental Review Process/ Hal Kimbal, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland: Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts: Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan: Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30255, Lansing, Michigan 48909, Tel. (517) 373–3530, Staff Contact: Don Bailey, Tel. (517) 334–6190

Minnesota: Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571

Mississippi: Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202, For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri: Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 760 Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana: Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska: None

Nevada: Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire: David G. Scott, Acting Director, New Hampshire Office of State Planning, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey: Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico: Dean Olson, Director, Management and Program Analysis Div., Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York: Director of the Budget, New York State

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Harold W. Juhre, Jr., New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina: Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611 Tel. (919) 733–4131

North Dakota: Bill Robinson, Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio: State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215, For Information Contract: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma: Don Strain, Oklahoma Dept. of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

Oregon: Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310 Tel. (503) 373–1998

Pennsylvania: Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island: Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note: Questions and correspondence concerning this State's review process should be directed to:

Mr. Michael T. Marfeo, Review Coordinator

South Carolina: Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734–0435

South Dakota: Sue Korte, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee: Charles Brown, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas: Leon Willhite, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711

Note: Questions concerning this State's review process should be directed to:

Intergovernmental Relations Division, Tel. (512) 463–1814

Utah: Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake city, Utah 84114, Tel. (801) 533–5245

Vermont: State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia: Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786-4474

Washington: Washington Department of Community Development, Attn: Washington Intergovernmental Review process, Dori Goodrich, Coordinator, Ninth and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 586–1240

West Virginia: Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin: Secretary James R. Krauser, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349

Wyoming: Ann Redman, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

District of Columbia: Lovetta Davis, DC State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727–9111

Virgin Islands: Toya Andrew, Federal Program Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517

Puerto Rico: Ms. Patricia G. Custodio, P.E., Chairman and Isael Soto Marreor, Director, Federal Proposal Review Office, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Northern Mariana Islands: Planning and Budget Office, Office of the Governor, Saipan, CM 96950

American Samoa: None

Guam: Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910

Appendix E—Regional Youth Contacts

Region I: Sue Rosen, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565–1144

Region II: Wilfred Phipps, Office of Human Development Services, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264–2974

Region III: David Lett, Office of Human Development Services, 3535 Market Street, Post Office Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596–1224

Region IV: Viola Brown, Office of Human Development Services, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 221–2128

Region V: William Sullivan, Office of Human Development Services, 300 South Wacker Drive, Chicago, IL 60606 (IL, IN, MI, MN, OH, WI), (312) 886–5368

Region VI: Eddie Falcon, Office of Human Development Services, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767–6596

Region VII: Steve Nash, Office of Human Development Services, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (617) 758–5401

Region VIII: Juan Cordova, Office of Human Development Services, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3106

Region IX: Ray Myrick, Office of Human Development Services, 50 United Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556–6178

Region X: Lee Koenig, Office of Human Development Services, 2901 Third Avenue, Mail Stop 503, Seattle, WA 98121 (AK, ID, OR, WA), (206) 442–0482

Appendix F—Cordinated Networks

Region I: Nancy Jackson, Massachusetts Committee for Children and Youth, 14 Beacon Street, Suite 706, Boston, MA 02108, (617) 742–8555

Region II: Margo Hirsch, Empire State – Coalition, 666 Broadway, 8th Floor, New York, NY 10012, (212) 674–2121

Region III: Paul G. Rosenfeld, Mid-Atlantic Association for Runaway Youth, 300 Cathedral Street, Suite 100, Baltimore, MD 21201, (301) 539–1848

Region IV: Gail L. Kurtz, Southeastern Network of Runaway Youth, 337 South Milledge Ave., Suite 209, Athens, GA 30605, (404) 354–4568

Region V: Denis Murstein, Youth Network Council of Chicago, Inc., 506 South Wabash Avenue, Suite 520, Chicago, IL 60605, (312) 427–2710

Region VI: Theresa Andreas, Southwest Network of Youth Services, Inc., P.O. Box, Austin, 6503, TX 78762, (512) 478–6676

Region VII: Jack McClure, M.I.N.K.: A Network for Runaway and Heomeless Youth, P.O. Box 14403, Parkview, MO 64152, (816) 741–5638

Region VIII: Linda Wood, Mountain Plains Youth Network, 1424 W. Century Ave., Suite 101, Bismarck, ND 58501, (701) 255–7229

Region IX: Nancy Sefcik, Western States Youth Services, 1722 J Street, Suite 11, Sacramento, CA 95814, (916) 447–7164

Region X: Ginger Baggett, Northwest Network of Runaway and Youth Services, 1307 W. Main Street, Suite 3, Medford, OR 97501, (503) 779–2393

Appendix G—Runaway and Homeless Youth Grantees, FY 1987

Region I

Connecticut

Council of Churches, 3030 Park Avenue, Bridgeport, CT 06604, John Cottrell, (203) 374–9471

Quinebaug Valley Youth Services Bureau, P.O. Box 812, North Grosvenordale, CT 06255, Joel Cooper, (203) 923–9526

Educational Resources, 90 North Main Street, West Hartford, CT 06107, Selma Lobel, (203) 521–8035

Maine

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976, Ron Hebert, (207) 474–8311

Little Brothers Association, 175 Lancaster Street, Portland, ME 04104, George Lopes, (207) 772–4651

Massachusetts

Newton-Wellesley-Weston-Needham, 1301 Centre, Newton, MA 02159, Lowell Haynes, (617) 244–4802

Project, RAP, Inc., 3 Broadway, Beverly, MA 01915, Nancy Pia, (617) 927–4506

Franklin/Hampshire Community Mental Health Center, 17 New South Street, Northampton, MA 01060, Deborah Ekstrom, (617) 732–3121

North Suffolk Mental Health, 301 Broadway, Chelsea, MA 02150, Virginia Doocy, (617) 889–4860

The Key Program, 484 West Street, Pittsfield, MA 01201, Randy Brewer, (413) 442–1503

Springfield YWCA, 137 Chestnut Street, Springfield, MA 01103, Mary Reardon Johnson, (617) 732–3121

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03105, Reed Carver, (603) 668–1920

Community Youth Advocates, 36 Tremont Square, Claremont, NH 03743, Holly Johnson, (603) 543–0427

Vermont

Washington County Youth Service Bureau, Box 627, Montpelier, VT 05602, Tom Howard, (802) 229–9151

Region II

New Jersey

Department of Social Services, 101 So. Shore Road, Northfield, NJ 08225, Holly Zachowski, (609) 645–7700
Anchor House, 482 Centre Street, Trenton, NJ 08611, Judith Donohoe, (609) 396–8329
Crossroads Programs, P.O. Box 98, Burlington, NJ 08016, Jeanne Stoops, (609) 261–5400
Tri-County Youth Services, 435 Main Street, Paterson, NJ 07501, Gail Manning, (201) 881–0280

New York

Town of Huntington Youth Bureau, 423 Park Avenue, Huntington, NY 11743, Paul Lowery, (516) 351–3061
YWCA of Binghamton/Broome County, 80 Hawley Street, Binghamton, NY 13901, Penny Smith, (607) 772–0340
Equinox, 214 Lark Street, Albany, NY, Donna McIntosh, (518) 465–9524
St. Agatha Home, 135 Convent Road, Nanuet, NY 10954, Mary Ellen Holtzman, (914) 623–3461
Compass House, 370 Linwood Avenue, Buffalo, NY 14209, Janell Wilson, (716) 886–1351
Oneida County Community Action Agency, 303 WEST Liberty Street, Rome, NY 13440, Treva Wood, (315) 339–5640
Enter, Inc., 252 East 112th Street, New York, NY 10029, Rudy Marchi, (212) 860–2460
Westchester Children's Association, 470 Mamaroneck Avenue, White Plains, NY 10605, Eileen Moran, (914) 946–7676
Under 21, 460 West 41st Street, New York, NY 10036, Eleanor Miller, (212) 354–4323
Educational Alliance, 197 East Broadway, New York, NY 10002, Marion Lazer, (212) 475–6200
Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401, Joan Mayer, (914) 679–9240
Flowers With Care, 23–40 Astoria Boulevard, Rev. James Harvey, (718) 726–9790
Family and Community Services, 41 West Main Street, Cobleskill, NY 12043, Marie Pracher, (518) 234–3581
Urban Strategies, Inc., 1542 East New York Avenue, Brooklyn, NY 11212, Glenda Taylor, (718) 346–7074
County of Nassau Youth Board, 1 West Street, Mineola, NY 11501, Ann Irvin, (516) 535–5893

Puerto Rico

The Salvation Army, Americo Miranda #1327/Caparra, Rio Piedras, PR 00619, Major WIlliam Samford, (809) 781–6883
Pueblo Del Nino, P.O. Box 788, Rio Grande, PR 00765, Jossie Ruidiaz, (809) 887–2225
Dispensario San Antonio, Box 213, Playa Station, Ponce, PR 00734, Sister Rosia Bauza, (809) 843–1910
Office of Human Development, King's Court & Loiza Street, Santurce, PR 00914, Jesus Joel Perez, (809) 728–7474

Region III

Delaware

Child, Inc., 11th and Washington Streets, Wilmington, DE 19801, Joseph Dell'Olio, (302) 655–3311

Pennsylvania

Voyage House, 1431 Lombard Street, Philadelphia, PA 19146, Francis Stoffa, (215) 545–2910
Youth Emergency Service, 401 North 34th Street, Philadelphia, PA 19104, Theodore Levine, (215) 222–3262
Catholic Social Service, P.O. Box 3551, Harrisburg, PA, Very Rev. Francis Kumontis, (717) 652–3934
Council of Three Rivers Indian Center, 200 Charles Street, Pittsburg, PA 15238, Russell Simms, (412) 782–4457
Catholic Social Services, 15 South Franklin Street, Wilkes-Barre, PA 18702, Thomas Cherry, (717) 824–5766
Youth in Action 7th and Morton Avenue, Chester, PA 19013, Tommie Lee Jones, (215) 874–1407
Three Rivers Youth, 2039 Termon Avenue, Pittsburg, PA 15212, Ruth Richardson, (412) 766–2215
Alternatives Corporation 360 King Street, Pottstown, PA 19464, Ronald Harris, (215) 327–1601
Tabor Children's Services, 601 New Britain Road, Doylestown, PA 18901 William Haussman, (215) 348–4017

Virginia

Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230, Richard Lung, (804) 282–4255
Mother Seton House, 642 North Lynnhaven Road, Virginia Beach, VA 23452, Susan Jones, (804) 498–4673
Central Virginia Child Development Association, P.O. Box 424, Charlottesville, VA 22902, Betty Goodman, (804) 977–4260
Volunteer Emergency Foster Care, 2317 Westwood Avenue, Suite 109, Richmond, VA 23230, William Christian, (804) 353–4698

West Virginia

Southwestern Community Council, 540 Fifth Street, Huntington, WV 25701, Joan Ross, (304) 525–5151

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, NE., Washington, DC 20002, Deborah Shore, (202) 546–6807

Region IV

Alabama

American Red Cross, 405 South First Street, Gadsden, AL 35901, Windell Jolley, (205) 547–9505
Mobile Mental Health Center, 2400 Gordon Smith Drive, Mobile, AL 36617, Edmund Lakeman, (205) 473–4423
Group Homes for Children, 880 South Lawrence Street, Montgomery, AL 36104, George E. Holy, (205) 834–5512

Florida

Youth Crisis Center, P.O. Box 16567, Jacksonville, FL 32245, Tom Patania, (904) 725–6622
Alternative Human Services, P.O. Box 13087, St. Petersburg, FL 33733, Roy Miller, (813) 526–1123
Crosswinds, P.O. Box 625, Merritt Island, FL 32952, Roger McDonald, (305) 452–0801
Lutheran Ministries of Florida, 4015 South Westshore Boulevard, Tampa, FL 33624, Ana Villan, (305) 420–3620
Youth and Family Alternatives, P.O. Box 1073, New Port Richey, FL 34291, Richard Hess, (813) 842–8060
Youth Shelter of Southwest Florida, 2240 Broadway, Ft. Myers, FL 33901, Vernon Langford, (813) 337–1313

Georgia

The Marshlands Foundation, 11 West Park Avenue, Savannah, GA 30401, Pat Peshoff, (912) 234–4048
The Alcove, 507 East Church Street, Monroe, GA 30655, Gail Bayes, (404) 267–4571
Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601, Martha Mendenall, (404) 548–5893
The Bridge, 77 Peachtree Place, NW., Atlanta, GA 30309, Kenneth Saunders, (404) 881–8344

Kentucky

Brighton Center, P.O. Box 325, Newport, KY 41072, Kim Brooks, (606) 581–1111

Mississippi

Mississippi Children's Home, 1801 N. West Street. Jackson, MS 39205, Christopher Cherney (701) 255–7229
Catholic Charities, P.O. Box 2248, Jackson, MS 39205, Gayle Watts, (601) 355–0639

North Carolina

The Relatives, 1000 East Boulevard, Charlotte, NC 28203, Jo Ann Greyer, (704) 377–0602
Youth Care, 211, S. Edgeworth Street, Greensboro, NC 27401, Charles Hodierne, (919) 378–9109

Cape Fear Substance Abuse Center, 801 Princess Street, Wilmington, NC 28401, Carlene Jackson, (919) 343–0145
Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723 Elizabeth Chambers, (704) 586–8958
Surry County Friends of Youth, P.O. Box 1626, Mount Airy, NC 27030, Selbert Wood, (919) 521–8682

South Carolina

Department of Youth Services (Crossroads), 1122 Lady Street, Columbia, SC 29202, TRudi Trotti, (803) 758–0262
Department of Yough Services (Hope House), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758–0262
Department of Youth Services (Greenhouse), 1122 Lady Street, Columbia, SC 29202, Trudi Trotti, (803) 758–0262

Tennessee

Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37197, Larry Feezel, (615) 524–2689
The Family Link, 1207 Peabody, Memphis, TN 38174, William Myers, (901) 725–6911
Hamilton County Government, 317 Oak Street, Chattanooga, TN 37403, Judi Byrd, (615) 757–2692
Oasis House, P.O. Box 121648, Nashville, TN 37212, Della Hughes, (615) 329–8036

Region V

Illinois

Maryville Academy, 1150 North River Road, Des Plaines, IL, Rev. John Smyth, (312) 824–6126
McHenry County Youth Services, 14124 South Street, Woodstock, IL 60098, Tom Engle, (815) 338–7360
Hoyleton Children's Home, 36 Loisel Village, East St. Louis, IL 62203, Lucky Hollander, (618) 398–0900
Central Illinois Youth Service Bureau, 832 South Fourth Street, Springfield IL 62703, Kaywin David, (217) 753–8300
Home Sweet Home Mission, 300 Mission Drive, Bloomington, IL 61701, Darryl Eslinger, (309) 828–7356
Naperville Community Outreach, 113 E. Van Buren, Naperville, IL 60540, John Prior, (312) 961–2992
Boys' Clubs of America, 307 Walnut Street, Rockford, IL 61108, Lou Tangorra, (815) 964–0834

Indiana

Youth Service Bureau, 222 Lincolnway West, South Bend, IN 46628, Bonnie Strycker, (219) 284–9231
Park Center, 909 E. State Boulevard, Fort Wayne, IN 46805, John Garner, (219) 424–7478
Stopover, 445 N. Penn Street, Indianapolis, IN 46204, Carol D'Amora, (317) 635–9301
Clark County Youth Shelter, 118 East Chestnut Street, Jeffersonville, IN 47130, Sherry Zachariah, (812) 284–5229
Indiana Juvenile Justice Task Force, 3050 North Meridian, Indianapolis, IN 46208, Ron Carpenter, (317) 926–6100

Michigan

Comprehensive Youth Services (Macomb), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Schietaert, (313) 463–7079
Comprehensive Youth Services (Harbor), Two Crocker Boulevard, Mt. Clemens, MI 48043, Joanne Schietaert, (313) 463–7079
Catholic Family Services, 1819 Gull Road, Kalamazoo, MI 49001, John Hemmer, (616) 381–9800
Cory Place, 812 N. Jefferson, Bay City, MI 48708, Mary Jo Tompkins, (517) 895–5563
Saginaw County Youth Council, 1110 Howard, Saginaw, MI, Ronald Spess, (517) 752–5175
Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085, Polly Learned, (616) 983–6351
Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707, Debra Schmidt, Ron S. Spess, (517) 365–3474
League of Catholic Women (Off The Streets), 120 Parsons Street, Detroit, MI 48201, David Suttner, (313) 831–1000
Advisory Centers (The Bridge), 1115 Ball Avenue, N.E., Grand Rapids, MI 49505, Douglas Ellis, (616) 458–7434
Ozone House, 608 N. Main Street, Ann Arbor, MI 48104, Lisa Wolf, (313) 662–2265
Every Woman's Place, 1706 Peck Street, Muskegon, MI 49442, Judith Hayner, (616) 726–4493

Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405, Thomas Sawyer, (612) 377–8800
St. Paul Youth Service Bureau, 421 West University Avenue, St. Paul, MN 55103, Raeone Buckman-Ellis, (612) 292–7191
Evergreen House, 921 Minnesota Avenue, Bemidji, MN 56601, Julie Portesan, (218) 751–4332
Red School House, 1089 Portland Avenue, St. Paul, MN 55104, John Whitecloud, (612) 227–4184

Ohio

Huckleberry House, 1412 Hamlet Street, Columbus, OH 43201, Douglas McCoard, (614) 294–8097
Children's and Family Service, 21 Indiana Avenue, Youngstown, OH 44505, Gerald Janosik, (216) 782–5664
Safe Landing Youth Shelter, 680 E. Market Street, Akron, OH 44303, David Fair, (216) 376–4200
Black Focus on the West Side, 4115 Bridge Avenue, Cleveland, OH 44113, Willie Griffin, (216) 631–7660
Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331, Sherley Hathaway
Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035, John Ollerton, (216) 324–6113

Wisconsin

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703, Steve Sperling, (608) 251–1126
Counseling Center of Milwaukee, 1428 North Farwell Avenue, Milwaukee, WI 53202, David Cobb, (414) 271–2565

Region VI

Arkansas

Youth Bridge, P.O. Box 668, Fayetteville, AR 72703, Michael Lee, (501) 632–4618

Louisiana

Tangipahoa Youth Service Bureau, 1826 River Road, Hammond, LA 70401, Jeanne Voorhees, (504) 345–1171
Education Treatment Council, 1146 Hodges Street, Lake Charles, LA 70601, Giles Gilliam, (318) 433–1062

New Mexico

Youth Development, 1710 Centro Familiar SW., Albuquerque, NM 87105 Augustine Baca, (505) 873–1604
Jemez House, P.O. Box 178, Alacalde, NM 87511, Carl Boaz, (505) 852–4264

Oklahoma

Youth and Family Services, 2404 Sunset Drive, El Reno, OK 73036, Warren Wells, (405) 262–6555
Northwest Family Services, 326 Seventh Street, Alva, OK 73717, John Jones (405) 327–2900
Cherokee Nation Youth Shelter, P.O. Box 948, Tahlequah, OK, Gwen Grayson, (918) 456–0671
Kay County Youth Services, 415 W. Grand, Ponca City, OK 74601, Marcus Whitt, (405) 762–8341
Youth Services of Tulas County, 1415 E. 8th Street, Tulas, OK 74120, Janis Walker, (918) 582–0061
Youth Services for Oklahoma County, 1219 Classen, Oklahoma City, OK 73106, Sharon Wiggins, (405) 235–7537
Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534, John Herdt, (405) 255–8800

Ft. Sill Apache Tribe, Rt. 2, Box 121, Apache, OK 73502, Mildred Cleghorn, (405) 588–2298
Bryan County Youth Services, 3700 University, Durant, OK 74702, Bryant Jones, (405) 924–6263

Texas

The Children's Center, 2127 Avenue M. Galveston, TX 77550, Donald Loving (409) 765–5212
YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201, Kathy Hamilton, (214) 954–0655
Greater San Marcos Youth Council, P.O. Box 1455, San Marcos, TX 78667, Rose Marie Penzerro
Houston Metropolitan Ministries, 2001 Huldy, Houston, TX 77006, Theodore Shorten, (713) 527–8218
The Bridge Association, 115 W. Broadway, Fort Worth, TX 76104, Gary Metcalf, (817) 926–9184
Stop Child Abuse and Neglect, 518 Pappas, Laredo, TX 78041, Pat Davila, (512) 724–3177
El Paso Center for Children, 3700 Altura, El Paso, TX 79930, Sandy Rioux, (915) 565–8361
Association of Mexican Americans, 204 Clifton, Houston, TX 77011, Gloria Guardiola, (713) 926–9491
Youth and Family Services, 2404 Sunset Drive, El Reno, OK 73036, Warren Wells, (405) 262–6555
Central Texas Youth Services Bureau, 703 Parmer Street, Killeen, TX 76540, Robert Butts, (817) 634–2085
Harris County Children's Services, 6425 Chimney Rock Road, Houston, TX 77081, Ann Hibbert, (713) 526–5701
Montgomery County Youth Services, P.O. Box 1316, Conroe, TX 77305, Gretchen Faulkner, (409) 756–8682
Youth Alternatives (Stepping Stone), 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340–8077
Youth Alternatives, Inc. (The Bridge), 3103 West Avenue, San Antonio, TX 78213, Roy Maas, (512) 340–8077
Grayson County Juvenile, Alternatives, 207 West Cherry, Sherman, TX 75090, Dave Farris, (214) 893–4717
Comal County Treatment Center, 1414 W. San Antonio Street, New Braunfels, TX 78130, Nancy Ney, (512) 629–4329

Region VII

Iowa

Foundation II, 1251 Third Avenue, S.E., Cedar Rapids, IA 52403, Steve Meyer, (319) 362–2176
Youth and Shelter Services, 217 Eighth Street, Ames, IA 50010, George Belitsos, (515) 233–3141
United Action for Youth, 311 N. Linn Street, Iowa City, IA 52240, Jim Swaim, (319) 338-7518

Kansas

United Methodist Youthville, 900 W. Broadway, Newton, KS 67114, Shirley Dwyer, (316) 283–1950
Wyandotte House, 632 Tauromee, Kansas City, KS 66101, Wayne Sims, (913) 342–9332
Wichita Children's Home, 810 N. Holyokes, Wichita, KS 67208, Sarah Robinson, (316) 684–6581

Missouri

Synergy House, P.O. Box 12181, Parkville, MO 64152, Jack McClure, (816) 741–8700
Asylum of St. Louis (Marian Hall) 325 N. Newstead, St. Louis, MO 63108, Patricia Bednara, (314) 531–0511

Nebraska

Panhandle Community Services, 4502 Avenue I, Scottsbluff, NE 69361, Joan Cromer, (308) 635–3089
Youth Emergency Services, 1908 Hancock Street, Bellevue, NE 68005, Robert Knott, (308) 635–3089

Region VIII

Colorado

Pueblo Youth Service Bureau, 612 West 10th Street, Pueblo, CO 81003, Molly Melendez, (303) 542–5161
Young Life (Dale House), 821 N. Cascade Avenue, Colorado Springs, CO 80903, George Sheffer, (303) 471–0642
Mesa County Department of Social Services (Horizon House), P.O. Box 20000–5035, Grand Junction, CO 81502, Treva Houck, (303) 241–8480
Ute Mountain, Ute Nation, General Delivery, Towaoc, CO 81334, Rita Arnett, (303) 565–3751
Volunteers of America, 1865 Larimer, Denver, CO 80202, Dianna Kunz, (303) 297–0408

Montana

Blackfeet Tribal Council, P.O. Box 1210, Browning, MT 59417, Violet Butterfly, (406) 338–5871
Mountain Plains Youth Service, 709 East Third, Anaconda, MT 59711, Linda Wood, (701) 255–7229

North Dakota

Mountain Plains Youth Service, 1424 W. Century Avenue, Bismarck, ND 58501, Linda Wood, (701) 255–7229

South Dakota

Mountain Plains Youth Service, 1206 N. Third Street, Aberdeen, SD 57401, Linda Wood, (701) 255–7229
Rosebud Sioux Tribe, P.O. Box 480, Rosebud, SD 57570, Marilyn Gangone, (605) 747–2381

Utah

Department of Social Services, 150 West North Temple, Salt Lake City, UT 84145, William Ward, (801) 533–7361

Wyoming

Mountain Plains Youth Service, 20 W. Works, Sheridan, WY 82801, Linda Wood, (701) 255–7220
Attention Home, 1810 Van Lennen Avenue, Cheyenne, WY 82001, Tricia Crilly, (307) 832–4740

Region IX

California

Sequoia YMCA, 1445 Hudson Street, Redwood City, CA 94061, Richard Gordon, (415) 366–8408
Ocean Park/Stepping Stone, 1833—18th Street, Santa Monica, CA 90404, Amy Somers, (213) 450–3881
YMCA of San Diego County, 7510 Clairemont Mesa Blvd., San Diego, CA 92111, Beverly Digregorio, (619) 292–4034
Center for Human Services, 1700 McHenry Village Way, Modesto, CA 94041, Linda Kovacs, (209) 526–1440
Diogenes Youth Services, 1722 J Street, Suite 11, Sacramento, CA 95814, Lynette Towers, (916) 443–6115
Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 93101, Sparky Harlan, (408) 984–5955
Western Youth Services (Odyssey), 204 E. Amerige Avenue, Fullerton, CA 92632, Jeff Harris, (714) 871-5646
South County Alternatives, 7751 Monterey Street, Gilroy, CA 95020, Albert Valencia, (408) 842–3118
Hollywood Community Services, 1754 Taft Avenue, Hollywood, CA 90028, Dan Gumbleton, (213) 367–1932
Tahoe Human Services, P.O. Box 848, South Lake Tahoe, CA 95705, David Hampton, (916) 541–2445
Turning Point Family Services, 12922 Seventh Street, Garden Grove, CA 92640, Edward Armstrong, (714) 638–8310
Shasta County YMCA, 1752 Tehema Street, Redding, CA 96001, Phil Paulson, (916) 244–6226
Mendocino County Schools, 518 Low Gap Road, Ukiah, CA 95482, Jim Levine, (707) 463–4915
Children's Home Society, 3200 Telegraph Avenue, Oakland, CA 94609, Pat Reynolds, (415) 655–7406
Department of Social Services, 4455 E. Kings Canyon Road, Fresno, CA 93750, Ben Kelley, (209) 453–6404
Klein Bottle, 1235–B Veronica Springs Road, Santa Barbara, CA 93105, David Edelman, (805) 682–3850
1736 Family Crisis Center, 1736 Monterey Boulevard, Hermosa Beach,

CA 90254, Carol Adelkoff, (213) 372–5843
San Diego Youth Involvement, 626 South 28th Street, San Diego, CA 92113, Sandra Sandoval, (619) 234–1871
Community Human Services Project, P.O. Box 3076, Monetery, CA 93942, Jo Kenney, (408) 373–3641
Casa de Bienvenidos, P.O. Box 216, Los Alamitos, CA 90720, Darwin Wagner, (213) 594–6825
Santa Cruz Counseling Service, 716 Ocean Street, Santa Cruz, CA 95062, Mary Sims, (408) 425–1830
South Bay Community Services, 406 Third Avenue, Chula Vista, CA 92010, Kathryn Schroeder, (619) 420–3620
Diogenes Youth Services (Yolo), 1722 J Street, Suite 11, Sacramento, CA 95814, Lynette Towers, (916) 443–6115

Guam

Sanctuary, Inc., P.O. Box 21030, Guam, CM 96921, Tony Champaco, (671) 734–2661

Commonwealth of the Marianas

Office of the Governor, Saipan, CM 96950, Margarita Olopai-Taitano, (670) 9366

Palau

Palau Community Action Agency, P.O. Box 3000, Koror Palau CM 96940, Doroteo Nagata

Region X

Alaska

Alaska Youth and Parent Foundation, 135 North Park, Anchorage, AK 99508, Sheila Gaddis, (907) 274–6541

Idaho

Brannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206, Stephen Mead, (208) 234–2244

Oregon

The Youthworks, 1307 W. Main Street, Medford, OR 97501, Craig A. Christiansen, (503) 779–2393
Northwest Human Services, 555—13th Street, Salem, OR 97301, Mary Beth Thompson, (503) 588–5828

Washington

Pierce County Alliance, 1201 S. 11th Street, Tacoma, WA 98405, Terree Schmidt-Whelan, (206) 572–4750
Youth and Community Services, 1545—12th Avenue South, Seattle, WA 98144, Victoria Wagner, (206) 322–7927
Thurston Youth Service Society, 112 East State Street, Olympia, WA, Barbara Branstetter, (206) 943–0780
Auburn Youth Resources, 816 F Street, S.E., Auburn, WA 98002, Richard Brugger, (206) 939–2202

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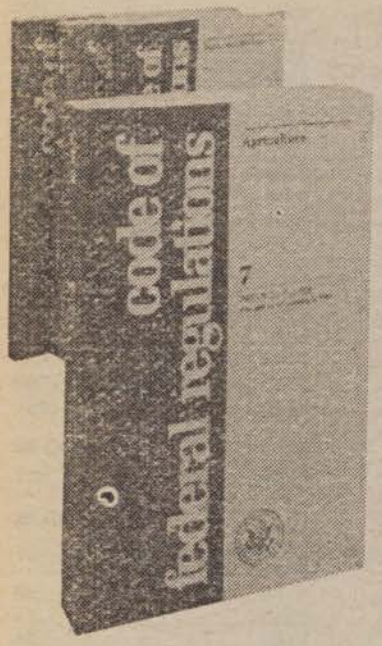
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