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Federal Register

Thursday
March 10, 1988

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THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

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

TAMPA, FL

- WHEN:** March 24; at 9:30 a.m.
- WHERE:** Auditorium
Tampa-Hillsborough County Public Library
900 North Ashley Drive, Tampa, FL.
- RESERVATIONS:** Call the St. Petersburg Federal Information Center on the following local numbers
- | | |
|----------------|--------------|
| St. Petersburg | 813-893-3495 |
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- WHEN:** March 25; at 10:00 a.m.
- WHERE:** Room 8 A and B
Broward County Main Library
100 S. Andrews Avenue, Fort Lauderdale, FL.
- RESERVATIONS:** Call the St. Petersburg Federal Information Center on the following local numbers:
- | | |
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WASHINGTON, DC

- WHEN:** April 15; at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** Carolyn Payne, 202-523-3187

BOSTON, MA

- WHEN:** April 19; at 9 a.m.
- WHERE:** Thomas P. O'Neill Federal Building
Auditorium,
10 Causeway Street,
Boston, MA.
- RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8123

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Presidential Documents

Title 3—

Proclamation 5775 of March 7, 1988

The President

Women's History Month, 1988

By the President of the United States of America

A Proclamation

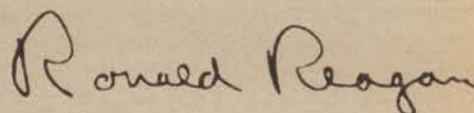
Women's History Month is a time for us to recognize and salute women's contributions to the American family and to society. Women have been making these contributions since this continent was explored and settled and America won its independence.

Women continue to strengthen the family and enrich our lives with intellectual gifts, creative talents, and an indomitable spirit—in business, government, volunteer activities, religious life, education, health, the military, sports, the arts, and many other areas. Historians will record the accomplishments of women at home as well, chronicling the tremendous contributions countless women have made by helping to raise children who adhere to the moral, ethical, civic, and patriotic principles that have made us, and kept us, a great country. We should be proud and grateful as we celebrate Women's History Month.

The Congress, by Senate Joint Resolution 262, has designated the month of March 1988 as "Women's History Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim March 1988 as Women's History Month. I call upon all Americans to observe this month with appropriate ceremonies and activities.

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



Presidential Documents

Executive Order 11624

Department of Justice

February 1, 1974

Washington, D.C.

Mr. Attorney General

Dear Mr. Attorney General:

I am writing to you regarding the matter of the President's pardon of the individuals involved in the Watergate scandal. I have been informed that you have been asked to provide a statement on this matter. I am sure that you will provide a thorough and accurate statement.

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Richard Nixon

Presidential Documents

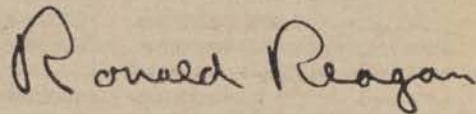
Executive Order 12628 of March 8, 1988

United Nations Industrial Development Organization

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and in order to facilitate United States participation in the United Nations Industrial Development Organization, it is hereby ordered as follows:

Section 1. The United Nations Industrial Development Organization, whose Constitution was ratified by the United States on August 2, 1983, and entered into force on June 21, 1985, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization has acquired or may acquire by international agreements or by Act of Congress.

Sec. 2. This Order shall be effective immediately.



THE WHITE HOUSE,
March 8, 1988.

[FR Doc. 88-5436

Filed 3-9-88; 10:27 am]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 53, No. 47

Thursday, March 10, 1988

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

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 292

[A.G. Order No. 1257-88]

Representation and Appearances

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: The revisions bar foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), from representing persons before the Immigration and Naturalization Service, the Board of Appeals, and immigration judges in any matter conducted within the geographical confines of the United States.

The revisions also limit representation of persons by such foreign-licensed attorneys to proceedings conducted outside the geographical confines of the United States and only in those situations where the Service, in its discretion, allows such representation. These revisions are necessary to improve representation in immigration proceedings by providing additional assurances that those attorneys who appear before immigration judges, the Board, and Service adjudicators are competent to do so.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT:

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703)756-6470.

SUPPLEMENTARY INFORMATION: The revisions eliminate the representation of persons by foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), in all matters before the Service,

the immigration judges, and the Board of Immigration Appeals (which are conducted within the United States) and limit representation by such foreign-licensed attorneys to matters before the Service outside the United States and to those instances where the Service, in its discretion, allows such representation.

These revisions are necessary because of the lack of control and oversight that the Service, the immigration judges, and the Board have of such foreign-licensed attorneys appearing before them.

Unlike United States licensed attorneys who, in the main, must graduate from a U.S. accredited law school and, in most cases, pass a bar examination, foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), are licensed in countries which may or may not have rigorous standards for bar membership. It would be difficult for the Service, immigration judges, or Board to know if such a person is properly or even minimally qualified to practice law before them. Therefore, for the protection of the persons appearing in various immigration proceedings and to assure the proper conduct of the proceedings, it is beneficial to eliminate the difficulties attached to representation by foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), by eliminating their appearances in proceedings in the United States.

In addition, since such foreign-licensed attorneys are not subject to standards of conduct and discipline as are attorneys who are members of various state bars, regulation of these attorneys by the Board or other U.S.-based authority is highly difficult. It is unlikely that the Board, for instance, would even be aware of a foreign disbarment or suspension. In contrast, U.S. disciplinary proceedings are general publicized in bar journals or state court proceedings and are usually known to the Service or other attorneys who practice immigration law.

Moreover, those foreign-licensing bodies which do supervise attorneys in their courts, have little reason to be interested in any activity relating to the Board, the immigration judges, or the Service. It is also unlikely that the immigration judges, the Board, or the Service would be able to effectively communicate with a foreign-licensing authority if the need should arise.

The revisions allow practice before the Service by foreign-licensed attorneys, who are outside the definition of 8 CFR 1.1(f), on a limited basis outside the United States. This privilege is preserved so that in foreign countries, where U.S. licensed attorneys are not readily available, representation will exist. Also, since each Service office affected is located in a particular foreign country, it is probable that Service officers will be familiar with and have better access to information regarding competency of foreign-licensed attorneys in that country. The provision that Service officers may allow such foreign-licensed attorneys the opportunity to appear as a matter of discretion should give the Service sufficient authority to remove such an attorney from representation if problems develop.

A notice of proposed rulemaking regarding this matter was published on January 29, 1987, at 52 FR 2951. A 30-day comment period was provided. There were several comments received regarding this proposal. All comments were considered. After careful consideration, the rule in final form was not changed.

One commenter strongly supported the proposal. This commenter basically agreed with the position that there are no assurances that foreign-licensed attorneys are competent to practice in an area of U.S. law and that disciplinary action by the foreign bar would be difficult at best.

Two commenters were critical of the proposal for several reasons. It was stated that this proposal would unduly limit representation for aliens to U.S. licensed attorneys. It was also stated that it was not proper as a matter of policy for the United States Government to bar representation by certain groups of attorneys. It was also pointed out that limiting appearances outside the U.S. to the discretion of Service officials would create undesirable difficulties.

A major purpose of this revision is to help assure that aliens are competently represented. This is an important and legitimate goal. The revision is designed to further that goal by creating additional assurances that aliens will be represented by competent counsel. It is also consistent with the Immigration and Nationality Act and basic tenants of administrative law that an agency may regulate those representatives who

appear before them. It is our view that limiting attorney practice to those who have exhibited a basic competency in U.S. law by being licensed in a U.S. jurisdiction is a reasonable step to assuring competent representation in immigration proceedings. Further, with regard to discretion, Service officials exercise discretion in many areas on a routine basis. They are quite capable of fairly deciding under what circumstances it would be appropriate to allow foreign-licensed attorneys to appear. It should be noted that under current procedures, Service officials may allow certain representatives to practice on a case-by-case basis and must exercise a discretion in doing so (see 8 CFR 292.1).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small entities. This rule will not be a major rule within the meaning of paragraph 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 292

Administrative practice and procedures. Aliens.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362.

PART 292—REPRESENTATION AND APPEARANCES

2. In § 292.1, paragraph (a)(6) is revised to read as follows:

§ 292.1 Representation of others.

(a) * * *

(6) Attorneys outside the United States. An attorney other than one described in § 1.1(f) of this chapter who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he/she resides and who is engaged in such practice. Provided that he/she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the Service official before whom he/she wishes to appear allows such representation as a matter of discretion.

Dated: March 3, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-5228 Filed 3-9-88; 8:45 am]

BILLING CODE 1531-26-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 24929; Amendment Nos. 21-61 and 36-14]

Noise Standards for Helicopters in the Normal, Transport and Restricted Categories; Correction

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; Correction.

SUMMARY: In the February 5, 1988, issue of the *Federal Register* (53 FR 3534), the FAA published a final rule revising 14 CFR Parts 21 and 36. The final rule contains errors that require correction. In a document published on March 3, 1988 (53 FR 6793), FAA published some corrections. This document reprints those corrections and makes further corrections. The errors include omission of punctuation and words. There were also spelling errors. The "\$" symbol should be spelled out when preceding an appendix section. Some sections were incorrectly referenced, one of the reference points and an angle for Figure 1 was cited incorrectly; one equation had a lower case letter when an upper case letter should have been used. This document serves to correct these errors.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Albersheim (202) 267-3560.

Corrections to the Preamble

1. Page 3534, first column, title of the final rule—delete the words "Final Rule for".

2. Page 3534, third column, under 1. General, first paragraph, sixth line—"work" should read "word". Second paragraph, 19th line—"acoustical" should read "acoustical".

3. Page 3535, second column, sixth line, "§ A36.7" should read "Section A36.7".

4. Page 3536, third column, first full paragraph, 20th line—"techological" should read "technological".

5. Page 3537, first column, ninth line—"State" should read "Stage". Page 3537, first column, under "Rule Structure", third line, "recognized" should read "reorganized". Same column, under "Regulatory Impact Evaluation" second paragraph, seventh line—delete the word "their".

6. Page 3538, first column, second paragraph, sixth line, "occurring" should read "occurring". Under 2. *No-Correction Window*, first paragraph, ninth line, hyphenate "no correction".

7. Page 3538, third column, first full paragraph, second line, add the word "of" after the word "all". In same paragraph, sixth line, remove the word "for" before the word "requiring" and add the word "by".

8. Page 3538, third column, last paragraph, eighth line, add a period after the word "service".

9. Page 3539, first column, under 6. *Test Costs*, first paragraph, fifth line—hyphenate "no correction".

10. Page 3539, second column, first line, place a hyphen after the word "per". In second column, first full paragraph, ninth line, hyphenate "no correction".

11. Page 3539, third column, under *List of Subjects*, third line, "Accoustical" should read "Acoustical".

Corrections to the Rule

1. Page 3540, first column, under § 36.1 b.(2), fourth line—add additional "\$" symbol. In first and second columns, under (g) (1), (3), and (4), "§ H36.305" should read "Section H36.305". Second column, eighth line from the bottom, "§ H36.305(b)" should read "Section H36.305(b)".

2. Page 3540, third column, under § 36.1581(e), seventh line—add additional "\$" symbol.

3. Page 3540, third column, under § 36.801, seventh line—"FAA-FAA-approved" should read "FAA-approved".

4. Page 3541, first column, first line, "FAA-FAA-approved" should read "FAA-approved".

5. Page 3541, first column, under § 36.805(b), last line of paragraph, "\$" should read "Section". Under § 36.805(c), fifteenth line, "\$" should read "Section".

6. Page 3541, second column, under Section H36.3(a), change "(i), (ii), (iii), and (iv)" to read "(1), (2), (3), and (4)" respectively.

7. Page 3541, second column, under Section H36.3(d), tenth line, "stablized" should read "stabilized".

8. Page 3541, third column, fifth line, "(e)" should read "(f)".

9. Page 3542, second column, under Part B, Section H36.101(b), sixth line, "station" should read "stations".

10. Page 3542, third column, under Section H36.101(b)(7), fourth line, "§ H36.107 of this Part." should read "Section H36.107 of this part."

11. Page 3542, third column paragraph (9), third line—"§ H36.205" should read "Section H36.205". Fourth line, same paragraph, "a" should read "an". Under (9)(c) *Weather restrictions*—"test" should read "tests".

12. Page 3542, third column, under Section H36.101(c)(2), in the first and second lines, change "36 F and 95 F (2.2 C and 35 C)" to read "36 ° F and 95 ° F (2.2 ° C and 35 ° C)".

13. Page 3543, first column, under (6), sixth line, change "meteorological" to "meteorological". Same column, under (7)(d), last word of paragraph, "Part" should not be capitalized.

14. Page 3543, third column, under Section H36.109(b)(3), first line, insert a comma after the word "equipment".

15. Page 3544, first column, under Section H36.109(6)(c)(2)(iii), sixth line, "Pecision" should read "Precision". Last word of the same paragraph, "Part" should not be capitalized.

16. Page 3544, second column, under Section H36.109(6)(d)(1), last word of the paragraph, "Part" should not be capitalized.

17. Page 3545, first column, forty-fifth line, second word, "Part" should not be capitalized.

18. Page 3545, second column, twenty-fifth line, "\$ H36.111(c)(4)" should read "Section H36.111(c)(3)".

19. Page 3545, second column, under Section H36.111(b), fifth line, "\$ H36.109" should read "Section H36.109". Under same section, (b)(5)(i), insert a period at the end of the sentence.

20. Page 3545, third column, third line, "\$ H36.3" should read "Section H36.3". Same column, fortieth line, change "\$ H36.205" to read "Section H36.205". Same column, forty-fourth line, change "\$ A36.3(f)(3)" to read "Section A36.3(f)(3)".

21. Page 3546, first column, under Section H36.113(b), last word of paragraph, "Part" should not be capitalized.

22. Page 3546, first column, under Section H36.113(c)(2), change (2) to (iii) and (iii) to (2).

23. Page 3546, second column, under Section H36.205(a), fourth line, "\$ H36.305" should read "Section H36.305".

24. Page 3546, third column, seventh line, "subtracted" is misspelled. Same column, under Section H36.205(b)(i), second line, "\$ H36.3" should read "Section H36.3". Same column, fifth line from bottom, "required" is misspelled.

25. Page 3547, first column, eighth line, insert a comma after the words "station A". Same column, ninth line, insert a period after the word "path". Same line, change "angle" to "angle Φ ".

26. Page 3547, third column, first line, insert the word "Section" before "H36.3(d)".

27. Page 3549, second column, first line, insert comma after "A" and change "M" to read "M_r".

28. Page 3549, third column, sixth line, insert a comma after the Greek letter ϵ .

29. Page 3551, first column, first line, insert a comma after the letter "A". Same column, seventh line, insert a comma after the letter "A".

30. Page 3551, first column, "f. PNLT corrections." should read "(f) PNLT corrections."

31. Page 3551, first column, under (f)(1)(i), "SPlic" should read "SPLic".

32. Page 3551, second column, under (3) *Sideline microphones*, fifth equation, last word, "fly-over" should read "flyover".

33. Page 3551, second column, first line, change "L_rA_c" to read "L_rA". Same column, under (3) *Sideline microphones*, third equation, "take off" should be one word. Same column, under (4) *Level flyover flight path*, second line, "(f)(i)" should read "(f)(1)".

34. Page 3551, second column, under (g)(1), fourth line change "\$ A36.5(d)(2)" to read "Section A36.5(d)(2)".

35. Page 3551, under § 36.205(g)(i), second column, change (a) to (i) and in the third column, change (b) to (ii), (c) to (iii), and (d) to (iv). Third column, eighteenth line, "(iv) Level flyover flight paths" should not be italicized.

36. Page 3551, third column, fourth line, " Δ_2 " should read " Δ_2 ". Same column, under (iii), third line, "using formula" should read "using the formula".

37. Page 3551, third column, Section H36.305(a), fifth line, § H36.101" should read "Section H36.305(a)".

38. Page 3552, second column, third line, "\$ H36.203" should read "Section H36.203".

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division, Office of the Chief Counsel.

[FR Doc. 88-5207 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-145-AD; Amdt. 39-5872]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires the installation of a door in the vertical fin access opening in the section 48 fuselage section, and the installation of covers in

the four front spar access holes of the horizontal stabilizers. This action is needed because the vertical fin and horizontal stabilizers could be overpressurized to the point of structural failure in the event of a failure of the aft pressure bulkhead.

EFFECTIVE DATE: April 22, 1988.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Scott F. Romer, Airframe Branch, ANM-120S, telephone (206) 431-1966. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which would require the installation of a vertical fin access door and horizontal stabilizer covers on Boeing Model 757 series airplanes, was published in the *Federal Register* on November 16, 1987 (52 FR 43769).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

One commenter requested the rule be withdrawn because of the fact that no cracks occurred during the fatigue test and because the risk of massive bulkhead rupture is extremely remote. The FAA does not agree. While the likelihood of a massive fatigue failure of the bulkhead is considered to be highly unlikely, service experience on other aircraft models has shown that other failure modes, such as extensive corrosion or accidental damage, are possible and, in fact, have resulted in catastrophic consequences. Therefore, the FAA considers this AD action to be appropriate.

Another commenter requested the rule be withdrawn since it is one of general applicability to all aircraft types and, thus, should be the subject of a Part 121 rule change. The FAA has, in fact, initiated a rulemaking project, the intent of which will be to address all areas of the structure, not just the area behind the aft pressure bulkhead. However, the

FAA has determined that this AD is necessary to eliminate the identified unsafe condition by requiring modification of Model 757 airplanes in a timely manner.

Another commenter suggested that the requirement of the AD be subject to a 10,000 cycle threshold. The FAA does not agree, since some damage modes are not related to the length of time the airplane has been in service or to cycles.

The final commenter requested more time be allotted for compliance due to delays in scheduled kit deliveries. A review of the delivery schedule of kits with the manufacturer has revealed that sufficient kits will not be available for airplanes undergoing major maintenance during the next few months. Accordingly, the FAA agrees with the commenter and has extended the compliance time from 15 months to 18 months. This change will ensure timely availability for the required modification kits and will allow airplanes to be modified during scheduled maintenance rather than being removed from service.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The cost of the kit is approximately \$4,043. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$695,417.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Service Bulletin 757-53-0038, dated August 27, 1987, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent structure failure of the vertical fin and horizontal stabilizers in the event of a failure of the aft pressure bulkhead, accomplish the following:

A. Install a vertical fin access door and horizontal stabilizer covers in accordance with Boeing Service Bulletin 757-53-0038, dated August 27, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 22, 1988.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.
[FR Doc. 88-5203 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-105-AD; Amdt. 39-5871]

Airworthiness Directives; Airbus Industrie A310-203, -221, and -222 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310 series airplanes, which requires inspection, modification, and repair, if necessary, of the rear pressure bulkhead. This amendment is prompted by reports of cracks detected in the attachment angles during fatigue testing of the rear pressure bulkhead. This condition, if not corrected, could eventually lead to failure of the bulkhead.

EFFECTIVE DATE: April 22, 1988.

ADDRESS: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection, modification, and repair if necessary, of the rear pressure bulkhead on certain Airbus Industries Model A310 series airplanes was published in the *Federal Register* on September 28, 1987 (52 FR 36274).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The first commenter stated that the Airbus service bulletin reflected in the proposed rule, which contains instructions for the x-ray inspections, modifications, and repairs, has been superseded by later revisions. These later revisions of the service bulletins correct certain errors which appeared in

previous versions, and introduce eddy current inspection procedures which reduce the inspection time from 330 to 7.5 manhours. The commenter suggested that the AD be revised to reflect the latest revision to the service bulletin. The FAA has considered this information and concurs with the commenter. The final rule has been changed to reflect the latest revision of the service bulletin as an alternate means to accomplish the requirements of the AD. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

The second commenter stated that the proposed initial inspection and modification would be required sooner than the time specified in the related French airworthiness directive (AD), and requested that the compliance time in the final rule be consistent with that of the French AD. In considering this request for a change in the originally proposed compliance time, the FAA has taken into account several items:

a. This AD action was prompted by cracks in certain aft pressure bulkhead attachment angles, discovered during fatigue testing, which appeared after approximately 32,000 to 37,500 simulated flights.

b. The French AD specifies that the initial inspection and modification be accomplished prior to the accumulation of 12,000 landings, whereas, the manufacturer, in its service bulletin, recommends this action be accomplished prior to the accumulation of 6,000 landings. Further investigation by FAA as to the reason for this difference revealed that the French AD specifies 12,000 landings as the *maximum* number of landings permissible before inspection and modification action must be accomplished to eliminate the potential for additional fatigue damage to aft pressure bulkhead attachment structure, while the service bulletin considers 6,000 landings as the *minimum* number.

c. The only U.S. operator affected by this AD, indicated that its high cycle Airbus Model A310-200 airplane had accumulated only 2,700 landings, as of October 20, 1987.

In consideration of the foregoing, the FAA has revised the final rule to require accomplishment of the initial inspection and modification prior to accumulating 9,000 landings, or within the next 3,000 landings after the effective date of the final rule, whichever occurs later. The FAA has determined that this revision of the number of landings permissible prior to the initial compliance time is both prudent and appropriate in

maintaining an acceptable level of safety.

The final commenter stated that the Airbus service bulletin and the French AD specify that only those airplanes modified between 6,000 and 12,000 landings would be subject to the initial and subsequent repetitive inspections; these inspections would not be required for planes modified prior to 6,000 landings. Since the proposed rule would require the initial inspection and modification prior to 6,000 landings, it appears to be more restrictive than the service bulletin and French AD. In response to this commenter, the FAA notes that, as discussed above, the final rule has been revised to require the initial inspection and modification to be accomplished prior to the accumulation of 9,000 landings, rather than 6,000 landings, as proposed. However, due to the critical nature of the bulkhead area, the FAA considers it imperative that, prior to incorporating the modification, an inspection be performed to detect and repair, if necessary, any fatigue damage present in the area.

The FAA has reconsidered paragraph B. of the rule, which describes the repetitive inspection requirements, and has determined that, as worded in the proposal, its intent could be misinterpreted. Therefore, paragraph B. of the final rule has been revised to clarify that only those airplanes which have incorporated the modification after the accumulation of 6,000 landings are subject to the repetitive inspection requirements.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, with the changes noted above.

It is estimated that 3 airplanes of U.S. registry will be affected by this AD. It will take approximately 330 manhours per airplane to accomplish the X ray inspection or 7.5 manhours per airplane to accomplish the eddy current inspection; it will take approximately 260 manhours per airplane to accomplish the required modification. The average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$70,800 or \$32,100, depending upon which inspection procedure is accomplished.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act

that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model A310 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to certain Model A310 series airplanes, as listed in Service Bulletin A310-53-2025, Revision 3, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the rear pressure bulkhead, accomplish the following:

A. Prior to the accumulation of 9,000 landings or within the next 3,000 landings after the effective date of this AD, whichever occurs later, accomplish the following:

1. Inspect the rear pressure bulkhead for cracks, using X-ray procedures, in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industrie Service Bulletin A310-53-2024, Revision 1, dated June 20, 1986; or using eddy current procedures, in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industrie Service Bulletin A310-53-2024, Revision 3, dated February 17, 1987. If any cracks are detected, repair prior to further flight in accordance with paragraph 2.C., Repair, of the applicable service bulletin.

2. Modify the attachment of the rear pressure bulkhead to FR 80/82 in accordance with paragraph 2., Accomplishment Instructions, of Airbus Industries Service Bulletin A310-53-2025, dated April 21, 1986, or Airbus Industrie Service Bulletin A310-53-2025, Revision 3, undated.

B. For airplanes that were modified in accordance with paragraph A.2., above, after the accumulation of 6,000 landings: Within 6,000 landings after the modification, and thereafter at intervals not to exceed 12,000 landings, repeat the X-ray or eddy current inspection, as applicable, of the rear pressure bulkhead required by paragraph A.1., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 22, 1988.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region

[FR Doc. 88-5204 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-147-AD; Amdt. 39-5873]

Airworthiness Directives; Sud Aviation Model Caravelle SE 210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Sud Aviation Caravelle series airplanes, which requires inspections for cracking and repair, if necessary, of the wing lower skin panels adjacent to wing rib No. 31. This amendment is prompted by reports of cracking detected in the area around the ends of stiffeners K 8.5 and C 8.5. This condition, if not corrected, could lead to failure of the wing.

EFFECTIVE DATE: April 22, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft

Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection for cracking, and repair, if necessary, of the wing lower skin panels adjacent to wing rib No. 31 on certain Sud Aviation Model Caravelle SE 210 series airplanes, was published in the *Federal Register* on December 17, 1987 (52 FR 47946).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$10,240 for the initial inspection.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane (\$320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft,

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Sud Aviation: Applies to Sud Aviation Caravelle series airplanes, listed in Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the wing, accomplish the following:

A. Within 100 landings after the effective date of this AD or prior to the accumulation of the number of landings specified in the schedule, below, whichever occurs later, accomplish the requirements of subparagraphs A.1. or A.2., below, as applicable.

Schedule 1

(1) 30,000 landings on airplanes whose maximum take-off weight¹ is 48 tons or less;

(2) 20,000 landings on airplanes whose maximum take-off weight¹ exceeds 48 tons but is no more than 52 tons;

(3) 10,000 landings on airplanes whose maximum take-off weight¹ exceeds 52 tons.

1. For airplanes without external doubler, perform visual and nondestructive testing inspections (NDI) for cracking adjacent to wing rib No. 31 in accordance with Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985.

2. For airplanes with external doublers, perform visual and radiographic inspections for cracking adjacent to wing rib No. 31 in accordance with Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985.

B. If no cracks are detected, repeat the inspections required by paragraph A., above, at the intervals specified in Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985, Figure 1, Wing Lower Surface Inspection Frequencies.

C. Any cracks detected during the inspections required by paragraph A. or B., above, must be repaired, prior to further flight, in accordance with Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the

¹ Maximum take-off weight as defined in the FAA-approved airplane flight manual.

accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 22, 1988.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-5202 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80215-8015]

Removal of Validated License Controls on Jig Grinders Exported to Country Groups QWY

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which specifies those items subject to Department of Commerce export controls. This rule amends the validated export license controls on certain jig grinders described in Export Control Commodity Number (ECCN) 1091A on the CCL according to a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Jig grinders that can be equipped with numerical control units with 2 simultaneously coordinated axes, with positioning accuracies greater (coarser) than ± 0.005 mm (0.00020 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.) or $\pm(0.005 + (0.002 \times ((L-300)/300)))$ mm (with L expressed in mm) [or $0.0002 + (0.00080 \times ((L-12)/12))$ in. (with L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.) no longer require a validated export license except to Country Groups S and Z.

Although technical control parameters were relaxed for certain jig grinders, this rule continues to maintain nuclear non-proliferation controls on these jig grinders and does not relax current nuclear controls to Western destinations. The Commodity Control List is amended to indicate that favorable consideration will be given to licenses to export jig grinders controlled solely for nuclear non-proliferation reasons to Country Groups Q, W, and Y, and the People's Republic of China. These jig grinders continue to be exported under General License G-DEST to countries listed in Supplement Nos. 2 and 3 to 15 CFR Part 373.

Notice of the foreign availability determination on this equipment was published on December 9, 1987 (52 FR 46634). Regulations that eliminated the validated license requirements for exports of this commodity to free world destinations were published on December 14, 1987 (52 FR 47388).

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Hall, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8550.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedures Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published as a proposed rule because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Joan Maguire, Office of

Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1—Commodity Control List [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group (Metal-Working Machinery), ECCN 1091A is amended by revising the *Validated License Required and Reason for Control* paragraphs to read as set forth below; by redesignating paragraph (b)(ii) as (b)(iii); by adding a new paragraph (b)(ii); and by revising the newly redesignated paragraph (b)(iii) introductory text to read as set forth below; and by adding a new Advisory Note 3 to the end of the entry to read as follows:

1091A Numerical control units, numerically controlled machine tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". (See § 376.11 for special information to include on the validated license application and reexport request.)

Controls for ECCN 1091A

Validated License Required: Country Groups QSTVWYZ. Jig grinders that meet the parameters of Advisory Note 3 can be exported under General License G-DEST to countries listed in Supplement No. 2 or 3 to 15 CFR Part 373.

Reason for Control: National security; nuclear non-proliferation, except exports to those countries listed in Supplement No. 2 or 3 to Part 373. Jig grinders that meet the parameters of Advisory Note 3 are controlled only for nuclear non-proliferation reasons.

List of Commodities Controlled by ECCN 1091A

(b) * * *

(ii) Jig grinders having all of the following characteristics:

(1) Overall positioning accuracy in any axis greater (coarser) than:

(A) ± 0.005 mm (0.0002 in.) for machines with a total length of axis travel equal to or less than 300 mm (12 in.), or

(B) $\pm (0.005 + (0.002 \times ((L-300)/300)))$ mm (with L expressed in mm) [or $0.0002 + (0.000080 \times ((L-12)/12))$ in. (with L expressed in inches)] for machines with a total length of axis travel, L, greater than 300 mm (12 in.); and

(2) Not more than 2 simultaneously coordinated axes.

(iii) Machines tools (other than boring mills, milling machines, machining centers, and jig grinders, described in paragraphs (b)(i) and (ii) above) and dimensional inspection machines, having all of the following characteristics:

Advisory Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY and the People's Republic of China for jig grinders covered under paragraph (b) above provided that the following conditions are met:

(a) Overall positioning accuracy in any axis equal to or greater (coarser) than:

(1) ± 0.002 mm (0.000080 in.) for jig grinders with a total length of axis travel equal to or less than 300 mm (12 in.); or

(2) $\pm (0.002 + (0.001/300) (L-300))$ mm for jig grinders with a total length of axis travel, L, greater than 300 mm (12 in.).

(b) Not more than 2 axes capable of simultaneously coordinated contouring motion.

Dated: March 2, 1988.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88-5158 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-88-1205; FR-1829]

Shared Housing in the Section 8 Existing Housing Certificate Program; Amendment to Final Rule; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: The Shared Housing final rule published in the *Federal Register* on February 16, 1988 (53 FR 4388) contained an erroneous date in the effective date section of the rule. The purpose of this rule is to correct that date.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Loritz, Existing Housing Division, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-6887. (This is not a toll-free number.)

Accordingly, the effective date for the final rule on Shared Housing in the Section 8 Existing Housing Certificate Program that appeared in FR Doc. 88-3206, published in the *Federal Register* issue dated February 16, 1988 (53 FR 4388), the effective date section, third column, last sentence, is corrected to read as follows:

EFFECTIVE DATE: * * * Therefore the June 1986 rule as amended by this rule will become effective on March 28, 1988, a date by which the required waiting period for this rule will have expired.)

Dated: March 7, 1988.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 88-5317 Filed 3-9-88; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 10-88]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsections (c)(3) and (d) of the Privacy Act, 5 U.S.C. 552a. This system is the "Central Index File and Associated Records, JUSTICE/OSC-001." Records contained in this system relate to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272-6474.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the *Federal Register* on December 21, 1987 (52 FR 48279). The public was given 30 days to comment. No comments were received.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that this order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy and Sunshine Acts.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, the Department amends 28 CFR Part 16 by adding § 16.78 as set forth below.

Dated: February 25, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. 28 CFR Part 16 is amended by adding § 16.78 to read as follows:

§ 16.78 Exemption of the Special Counsel for Immigration-Related, Unfair Employment Practices Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) Central Index File and Associated Records, JUSTICE/OSC-001.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries.

(2) From subsection (d) because access to the records might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

[FR Doc. 88-5224 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of an Amendment to the Kentucky Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: The Director of OSMRE is announcing the approval of a proposed amendment submitted by the Commonwealth of Kentucky as a modification to its permanent regulatory program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Kentucky blaster certification regulations.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior effective upon publication in the May 18, 1982 *Federal Register* (47 FR 21404-21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 *Federal Register*. Other actions concerning the approval, the subsequent program amendments, and required amendments are identified at 30 CFR 917.13, 917.15, 917.16, and 917.17.

II. Submission of Proposed Amendment

On December 10, 1985, OSMRE published in the *Federal Register* (50 FR 50293) the approval of the Kentucky Administrative Regulations (KAR) at 405 KAR 7:070 concerning the blaster certification program. By letter dated June 17, 1987 (Administrative Record KY-739), Kentucky submitted to OSMRE an amendment to the Kentucky program that modified the existing procedures for certification of persons responsible for blasting operations incident to coal exploration and surface coal mining.

On July 13, 1987, OSMRE published a notice in the *Federal Register* (52 FR 26159-26160) announcing receipt of the proposed amendment and inviting comment on its adequacy. The public comment period ended August 12, 1987. The public hearing scheduled for August 7, 1987, was not held because no one requested an opportunity to testify.

On September 11, 1987 (Administrative Record KY-761), Kentucky submitted additional proposed modifications to 405 KAR 7:070. This new submittal supersedes the proposed amendment submitted on June 17, 1987.

The September 11, 1987 submittal is substantively the same as the June 17, 1987 submittal, with the following exceptions: The term "surface blasting operations" is now defined in section 1 of the regulations; the provisions that apply when information in certification applications is falsified or misrepresented have been revised in section 2(7)(b); the grace period for certification renewal has been extended

in section 3(2)(b); the time period during which a blaster may contest a cited violation has been revised in section 4(2)(c); the provisions requiring that revoked, suspended, and invalid certificates be delivered by hand to the Department for Surface Mining Reclamation and Enforcement have been removed from sections 4(6)(d)2 and (7)(a); and several minor changes have been made to improve clarity of the regulations without altering the original intent.

On October 22, 1987, OSMRE published a notice in the *Federal Register* (52 FR 39540-39541) announcing receipt of the resubmitted amendment and soliciting public comment on its adequacy. The public comment period ended November 6, 1987.

III. Director's Findings

As submitted on June 17, 1987, and revised on September 11, 1987, the amendment to Kentucky's blaster certification regulations at 405 KAR 7:070 generally expands upon the provisions originally approved on December 10, 1985 (50 FR 50293). Kentucky noted that its experience in implementing those regulations revealed a need for revisions to clarify requirements, resolve implementation problems and remove obsolete, redundant or inefficient provisions.

The amendment reorganizes 405 KAR 7:070; eliminates obsolete language pertaining to the original effective date of the regulations; and adds various specific administrative, procedural and application content requirements clarifying the vaguer general provisions originally approved. It includes numerous additional minor changes of an editorial nature to improve clarity without altering the original intent of the regulations. As revised, the rules also apply to coal exploration operations, not just surface coal mining operations. Other new provisions include language explicitly granting the Natural Resources and Environmental Protection Cabinet ("the Cabinet") the authority to verify any information submitted in the application and to deny the application if the applicant cannot be expected to conduct himself or herself in a responsible manner. New section 7 requires blasters to notify the Cabinet of any changes in name, address, telephone number, or place of employment within 30 days of the change.

While the revisions discussed in the preceding paragraph lack direct Federal counterparts, none conflict with the Federal requirements for State blaster certification programs, as contained in

30 CFR Part 850. Nor do any of the revisions adversely affect the basis on which the Director approved Kentucky's blaster training, examination and certification program (50 FR 50293, December 10, 1985). Therefore, the Director finds that these revisions to 405 KAR 7:070 are not inconsistent with the requirements of SMCRA or the Federal regulations at 30 CFR Part 850.

In addition to the revisions discussed above, Kentucky has revised the definition of "blaster" at 405 KAR 7:070 Section 1(1)(a) to mean, in part, "a person who is directly responsible for surface blasting operations", rather than a person "directly responsible for the use of explosives" as in the previous rule and the corresponding Federal regulation at 30 CFR 850.5. However, at 405 KAR 7:070 Section 1(1)(b), Kentucky has added a definition of the term "surface blasting operations", which, among other things, includes the use of explosives. Therefore, the Director finds the Kentucky definitions of "blaster" and "surface blasting operations" to be no less effective than the Federal definition of "blaster".

IV. Public and Agency Comment

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies. Only one set of substantive comments, from the Forest Supervisor of the Daniel Boone National Forest, was received. A summary of the comments and their disposition appears below:

1. The Supervisor stated that 405 KAR 7:070 section 2(6) should require that an applicant failing the examination complete an approved training course prior to retaking the examination. In response, the Director notes that this provision, which requires an applicant failing the examination once to wait 30 days before retaking it and an applicant failing the examination twice to repeat the entire training and application process, remains substantively unchanged from the previous rule, which was found to be consistent with all Federal requirements.

2. The Supervisor commented that a blaster should be able to appeal or request a formal hearing when his or her application for certification is denied. Although 405 KAR 7:070 section 2 (applications), unlike sections 3 (renewals) and 4 (suspension and revocation), does not expressly provide for appeal of a decision denying certification, the general administrative review provisions of 405 KAR 7:090 section 5 allow appeals of all Cabinet

determinations. Denial of an application would be one such determination.

3. Finally, the Supervisor stated that the Cabinet should not have a delay issuance of an order to suspend certification under 405 KAR 7:070 section 4(2)(b) until an investigation determines whether a violation seems likely to occur or has occurred. The Director does not agree. The proposed rule at 405 KAR 7:070 section 4(2)(b) requires the Cabinet to immediately suspend the blaster's certification if further operations conducted by or under the direction of the blaster may reasonably be expected to constitute an imminent danger to the health and safety of the public or cause significant, imminent environmental harm. Although the rule does require the Cabinet to determine that the blaster is or has been in violation before suspending the certification, the Director finds this provision to be reasonable and in accordance with the corresponding Federal regulations at 30 CFR 850.15(b), which establish specific grounds on which the regulatory authority may, after making an appropriate finding, suspend or revoke a blaster's certificate. The grounds enumerated in the Federal rule are similar to the violations listed in the State rule. With respect to public protection, as noted, the State and Federal rules provide for expedited suspension procedures under certain circumstances. Where these would be insufficient to abate an imminent danger or threat of harm, the inspector has the authority, under other provisions of the Kentucky program, to order cessation of operations on specific sites as necessary.

Public Comments

OSMRE solicited public comment on the proposed amendment in the July 13, 1987 *Federal Register* (51 FR 26159-26160) with the comment period closing on August 12, 1987. Since no one requested an opportunity to testify, the public hearing scheduled for August 7, 1987, was canceled. Upon receipt of a revised version of the amendment (September 11, 1987), OSMRE reopened the comment period until November 6, 1987 (52 FR 39540-39541, October 22, 1987).

One set of comments was received, from Thomas J. FitzGerald on behalf of the Kentucky Resources Council. Mr. FitzGerald stated that the amendment fails to provide for imposition of civil penalties for violations of the certification requirements or substantive violations of performance standards, and thus is less effective than the Federal rule at 30 CFR 955.17. The Director does not agree. Section 5 of 405

KAR 12:010 states that any person who violates any provision of Title 405, Chapters 7 through 24, or who fails to perform the duties imposed by such provisions, or who fails to comply with an order or determination of the Cabinet pursuant to such provisions shall be subject to civil and criminal penalties. The amendment under consideration is a part of Chapter 7 and thus would be covered by these provisions.

Furthermore, the Federal standards for State blaster certification programs, as set forth at 30 CFR Part 850, contain no specific civil penalty provisions. The Federal rule referenced by the commenter, 30 CFR 955.17, applies only to Federal programs. Therefore, the Kentucky rule as amended is no less effective than the applicable Federal rules.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment to 405 KAR 7:070, as submitted on June 17, 1987, and modified on September 11, 1987. The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

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

2. Compliance With Executive Order 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

3. Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

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

Date: March 3, 1988.

James W. Workman,

Deputy Director, Operations and Technical Services.

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

PART 917—KENTUCKY

1. The authority citation for Part 917 is revised to read as follows:

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

2. In § 917.15, the heading is revised, paragraph (y) is redesignated as paragraph (x), and a new paragraph (y) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

(y) The following amendment to the Kentucky Administrative Regulations (KAR) as submitted to OSMRE on June 17, 1987, and modified on September 11, 1987, is approved effective March 10, 1988: Revisions to 405 KAR 7:070 concerning blaster certification requirements and procedures.

[FR Doc. 88-5235 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Removal of Requirement To Amend the Ohio Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the removal of a requirement that the State of Ohio amend its permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment as formerly

required by 30 CFR 935.16(c) pertained to performance bond replacement following the incapacity of a bank or surety company.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT:

Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program took effect on August 16, 1982, following the conditional approval of the Secretary of the Interior. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 *Federal Register* (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Background on the Required Amendment

By letter dated December 1, 1986 (Administrative Record Number OH-0799), the Ohio Department of Natural Resources, Division of Reclamation, proposed to amend several provisions of Ohio Administrative Code (OAC) section 1501:13-7-03. On June 19, 1987 (52 FR 23285), the Director approved these portions of the proposed revisions to OAC 1501:13-7-03(B)(5)(g) and 1501:13-7-03(B)(7)(h) which extend from sixty to ninety days the period an operator losing surety or collateral bond coverage has to obtain replacement coverage. However, the Director disapproved that portion of proposed OAC 1501:13-7-03(B)(5)(g) which would have allowed operators to continue to mine an additional ninety days beyond the initial ninety days without replacing the bond in full. The Director also added a new paragraph (c) to 30 CFR 935.16 requiring Ohio to amend its program to reflect the disapproval by disallowing continued mining without adequate bond coverage.

On January 16, 1987 (Administrative Record Number OH-0887), Ohio submitted an amendment revising numerous State regulations, including OAC 1501:13-7-03(B)(5)(g). As revised, the State rule requires that operators who lose their bond coverage cease coal extraction and begin permanent

reclamation operations immediately upon expiration of the time allowed for bond replacement, which is not to exceed ninety days.

As stated in the *Federal Register* notice approving this amendment (52 FR 216959, July 17, 1987), the Director found this provision to be similar to and therefore no less effective than the corresponding Federal regulations at 30 CFR 800.16(e)(2). Therefore, on December 7, 1987, the Director announced his intention to remove the requirement that Ohio amend its program in accordance with the provisions of 30 CFR 935.16(c). In the same notice, he requested public comment on the appropriateness of this action (52 FR 46379, December 7, 1987).

III. Public Comment

The public comment period announced in the December 7, 1987 *Federal Register* ended January 6, 1988. No comments were received. The public hearing scheduled for January 4, 1988, was not held since no person requested an opportunity to testify at the hearing.

Pursuant to 30 CFR 732.17(h)(1)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies. No comments were received.

IV. Director's Findings and Decision

Imposition of the required program amendment at 30 CFR 935.16(c) and the partial disapproval of OAC 1501:13-7-03(B)(5)(g) at 30 CFR 935.12(b) were both based on the failure of the December 1, 1986 version of this State rule to require bond coverage in a manner no less effective than that specified in 30 CFR 800.16(e)(2). As discussed in the portion of this notice entitled "Background on the Required Amendment", on July 17, 1987, the Director found OAC 1501:13-7-03(B)(5)(g), as submitted in revised form on January 16, 1987, to be no less effective than the corresponding Federal regulations at 30 CFR 800.16(e)(2).

Therefore, the Director finds that Ohio has met the requirements of 30 CFR 935.16(c). Based on this finding, the Director is amending 30 CFR Part 935 to remove paragraph (c) of § 935.16 and paragraph (b) of § 935.12.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

V. Procedural Determinations

1. Compliance with the National Environmental Policy Act

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

2. Compliance with Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

3. Compliance with the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

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

Date: March 3, 1988.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

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

PART 935—OHIO

1. The authority citation for Part 935 is revised to read as follows:

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

§ 935.12 [Amended]

2. In § 935.12, paragraph (b) is removed and reserved.

§ 935.16 [Amended]

3. In § 935.16, paragraph (c) is removed and reserved.

[FR Doc. 88-5234 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 86-082a]

Identification of the Horizontal Datum Referenced in the Coast Guard Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to inform the public that due to the ability to establish global reference systems that provide more accurate geographic positions (latitude and longitude), the horizontal datums referenced on maps and charts are being revised and during the interim, various horizontal datums may be encountered. The geographic positions listed in the regulations in Title 33 Part 161 are referenced to various horizontal datums such as the North American Datum of 1927, U.S. Standard Datum, and others; however, the datum is not identified in the regulation. The National Oceanic and Atmospheric Administration (NOAA) has identified the North American Datum of 1983 (NAD 83) to replace the various horizontal datums currently in use. This rulemaking inserts cautionary reminders that during the conversion there may be discrepancies between the positions described in the existing regulations and the charted positions.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker, (202) 267-0357.

SUPPLEMENTARY INFORMATION: A final rule was previously published for this regulation (33 FR 33809; September 8, 1967); however, one section was inadvertently omitted. This rulemaking is being made effective in less than 30 days. This rulemaking does not substantively change the existing regulations. It merely provides a means of identifying when geographic positions are referenced to NAD 83. Therefore, the Coast Guard finds that an opportunity for notice and comment is unnecessary under 5 U.S.C. 553(b)(B). Because of the different datums referenced on the many maps and charts that are produced, and in view of the necessity for individuals to be able to identify the horizontal

datum referenced in the published geographic positions, it has been determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days.

Drafting Information

The principle persons involved in drafting this rulemaking are Mr. Frank Parker, Project Manager, and Mrs. Christena Green, Project Attorney, Office of the Chief Counsel.

Discussion of the Regulation

Through the use of satellites and other modern surveying techniques, it is now possible to establish global reference systems which provide more accurate geographic positions. Currently, several datums such as the North American Datum of 1927, U.S. Standard Datum, and others are in use. The National Oceanic and Atmospheric Administration (NOAA) has identified the North American Datum of 1983 (NAD 83) to replace the various datums used in the past on maps and charts. NOAA has begun converting geographic positions to NAD 83. Over time, all maps and charts will reference NAD 83, except for nautical charts of the Pacific Territory Islands, which will be compiled on World Geodetic System 1984 (WGS 84). For the accuracy required for charting purposes, geographic positions referenced to WGS 84 are essentially equivalent to the geographic positions referenced to NAD 83. The entire conversion is expected to be accomplished over a ten-year period.

During the period of conversion, some maps and charts will be referenced to the new NAD 83, while others will still be referenced to the former datums, such as the North American Datum of 1927, U.S. Standard Datum, and others. Corrections must be made to the geographic positions from the previous referenced datum to NAD 83. As a result of applying these corrections the geographic position descriptions will change; however, the location of objects in relation to surrounding land does not change.

The regulations in Title 33, Part 161 are being amended to include a notice that indicates when the datums of the geographic positions in these regulations are referenced to NAD 83.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is

unnecessary. This rule is merely adding information to clarify the existing regulations. This final rule will not have a quantifiable cost impact. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 161

Vessel traffic management.

For reasons set out in the preamble, Title 33, Chapter I, Part 161 of the Code of Federal Regulations, is amended as set forth below.

PART 161—[AMENDED]

1. The authority citation for Part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 161.301(d) is added to read as follows:

§ 161.301 Purpose and applicability.

(d) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose referenced horizontal datum is the North American Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

Dated: March 7, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.

[FR Doc. 88-5282 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 8F3579/R942; FRL-3339-2]

Pseudomonas fluorescens EG-1053; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on cottonseed and cotton forage. This exemption was requested

by Ecogen, Inc., Langhorne, PA 19047-1810. This rule will expire on March 2, 1990.

DATE: Effective on March 2, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the *Federal Register* of December 16, 1987 (52 FR 47754), which announced that Ecogen, Inc., 2005 Cabot Blvd. West, Langhorne, PA 19047-1810, had submitted pesticide petition (PP) 8F3579 to EPA, proposing to amend 40 CFR Part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on the raw agricultural commodity cotton. In the *Federal Register* of February 24, 1988 (53 FR 5458), it was announced that Ecogen, Inc., had amended PP 8F3579 to replace cotton specifically with cottonseed and cotton forage for exemption from the requirement of a tolerance. Ecogen's strain of the bacterium *Pseudomonas fluorescens* was isolated from soil in Mississippi and has not been genetically altered. This microorganism is a natural soil isolate and has not been altered or improved. Microorganisms known as *Pseudomonas fluorescens* constitute a rather diverse complement of bacteria that occur in both soil and aquatic habitats. They can be isolated from these sources using enrichment with appropriate media. The proposed use of the biofungicide is for control of the *Pythium/Rhizoctonia* seedling disease complex of cotton.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, acute intravenous toxicity/pathogenicity study in the mouse, primary eye irritation study in the rabbit, and hypersensitivity study in the guinea pig. These studies were performed on the active ingredient and the end-use product Dagger™. A review of these studies indicates that the

biofungicide was not toxic to test animals when administered via the oral, dermal, or pulmonary routes. The active ingredient, *P. fluorescens* EG-1053, was not infective or pathogenic for test animals when administered via the oral, pulmonary, or intravenous route. The end-use product Dagger™ G biofungicide did not elicit a delayed type of hypersensitivity reaction in guinea pigs. The end-use product was mildly irritating to the eye. All the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from use of the biofungicide on cotton.

As a condition of registration, the Agency is requiring Ecogen, Inc., to perform further taxonomic characterization of its *P. fluorescens* strain, so that placement to the level of biovar can be made. As part of the characterization, a growth curve that establishes the upper temperature limits for growth of the *P. fluorescens* strain also must be done. It is reported by Ecogen, Inc., that *Pseudomonas fluorescens* is a ubiquitous soil bacterium, and it is reasonable to assume that most people are exposed daily to this organism.

P. fluorescens has been associated with disease in fish. In most cases, identification was confidently established at the genus level, but identification to the species level was accomplished in only about half of the cases. The Agency is not aware of disease occurrence with *Pseudomonas* in aquatic invertebrates.

Avian testing on the active ingredient, *P. fluorescens* EG-1053, by both the oral and injection route showed no adverse effects at levels of 6.9×10^6 and 4.6×10^6 colony-forming units per bird. The Agency believes that there will not be any adverse effects to avian species through the use of *P. fluorescens* EG-1053 on cotton. Also, intravenous injection studies using mice show no pathogenic or toxic signs attributable to *P. fluorescens* EG-1053. Therefore, the Agency believes that the use of this product will not cause adverse effects to feral mammals. Since the use is an in-furrow treatment to be applied at planting time, no insects are expected to be exposed to the active ingredient. Therefore, the Agency does not expect any adverse effects on beneficial insects. Testing in nontarget plants showed that, in most cases, the active ingredient caused an increase in growth after germination. The exceptions were cabbage, which showed a significant decrease in seedling height, and lettuce,

which showed a significant decrease in fresh weight at the end of 4 weeks. No phytotoxic effects were seen in any of the species tested. The submitted ecological effects data indicate that, in general, *P. fluorescens* EG-1053 should not pose a threat to most plants. There is a possibility that some crop species may be affected. The Agency does not feel that there will be a "may effect" situation for endangered terrestrial wildlife, insects, or plants through the use of *P. fluorescens* EG-1053 on cotton. No "may effect" determination can be made for endangered fish until an acceptable fish study is submitted.

Because of the inability to predict with some measure of confidence the number of bacteria reaching aquatic ecosystems from terrestrial applications and what will occur once they reach the ecosystem, the effect on aquatic organisms that may be affected by *P. fluorescens* EG-1053 must be tested. The Agency is requiring the registrant to submit within 9-12 months of conditional registration, the following studies:

1. Freshwater fish testing (154-19).
2. Freshwater aquatic invertebrate testing (154-20).
3. Target area phytotoxicity tests (2) (121-1). The previously submitted tests may be upgraded to core if the percent of active ingredient is reported and the test microorganism is confirmed as the same one being proposed for registration.
4. Seedling germination/vegetative vigor (Tier I) (122-1).
5. Seedling germination/vegetative vigor (Tier II).

Until these studies are completed, the granting of an exemption from the requirement of a tolerance would be in the public interest because of the beneficial role of this biofungicide in or on cotton. This rule will expire on March 2, 1990. Based on the review of the new data, the Agency will consider extending the rule.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Pseudomonas fluorescens EG-1053 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the

regulation is established as set forth below.

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

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. New § 180.1088 is added to read as follows:

§ 180.1088 *Pseudomonas fluorescens* EG-1053; exemption from the requirement of tolerance.

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Pseudomonas fluorescens* EG-1053 in or on cottonseed and cotton forage. This rule will expire on March 2, 1990.

Dated: March 2, 1988.

Douglas D. Campt,
Director, Office of Pesticide Programs.
[FR Doc. 88-5285 Filed 3-9-88; 8:45am]

BILLING CODE 6560-50-M

40 CFR Parts 264, 265 and 270

[FRL-3339-]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice corrects errors in the preamble discussion of a final rule for hazardous waste management facility closure requirements that appeared in the **Federal Register** on Friday, May 2, 1986 (51 FR 16422). Certain provisions of the May 2 rule were erroneously described as less stringent than the previous Federal program. The correct characterization of these provisions is now being provided.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC or Marty Madison, Office of Solid Waste (WH-563B), U.S. Environmental Protection Agency, Washington, DC 20460, (202) 382-2229.

SUPPLEMENTARY INFORMATION: On March 19, 1985, the Environmental Protection Agency (EPA) proposed to amend portions of the closure and post-closure care and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities (TSDFs) under the Resource Conservation and Recovery Act (RCRA). See 50 FR 11068. On May 2, 1986, EPA promulgated these amendments in final form. See 51 FR 16422.

In the preamble accompanying the May 2 rule, the section entitled "Effect Upon State Authorization", 51 FR 16442, indicated that certain of the newly promulgated requirements were considered to be less stringent than or to reduce the scope of the previous Federal requirements. Authorized States must revise their programs to adopt provisions equivalent to or more stringent than Federal requirements. Authorized States are not required to revise their programs to be equivalent to less stringent provisions.

Upon subsequent review of the May 2 requirements, however, EPA has recognized that certain sections or subsections of the rule were mischaracterized in the preamble as less stringent than the previous Federal closure and post-closure standards in Parts 264 and 265. These sections are, in fact, more stringent standards. Thus,

they should not have been included on the list of less stringent sections provided in the preamble at 51 FR 16442.

If a section was characterized as less stringent, but was divided into subsections, some more and some less stringent, only the subsections that should have been identified as more stringent will be recharacterized. However, if a section was not divided into subsections, but contained both more and less stringent parts, the entire section will be recharacterized as more stringent.

The following sections and subsections previously and erroneously characterized as less stringent should have been classified as more stringent: 264.115, 264.118(a), 264.143(a)(10), 264.143(b)(4)(ii), 264.143(c)(5), 264.143(d)(8), 264.143(e)(5), 264.145(a)(11), 264.145(b)(4)(ii), 264.145(c)(5), 264.145(d)(9), 264.145(e)(5), 265.112(d)(1), 265.115, 265.118(a), 265.118(e), 265.118(f), 265.143(a)(10), 265.143(b)(4)(ii), 265.143(c)(8), 265.143(d)(5), 265.145(a)(11), 265.145(b)(4)(ii), 265.145(c)(9) and 265.145(d)(5).

States which have not yet modified their regulations for this May 2, 1986 final rule must do so on the basis of today's correction. States which have already modified their regulations to conform to the May 2, 1986 final rule but have chosen to omit the sections erroneously characterized as less stringent, will have to make further program modifications. This correction notice does not alter the time provided for States to revise their programs to reflect the Federal program, including the sections identified today as more stringent. 40 CFR 271.21(e) (51 FR 33722, September 22, 1986) provides for extensions of time at the discretion of the Regional Administrator for States to adopt changes to their regulations and/or statutes to conform to changes in the Federal program.

Application of these extensions to the May 2, 1986 final rule would allow the States until January 1, 1989 to make the appropriate modifications to their program envisioned by this correction notice. In regard to States that have already modified their regulations but have chosen to omit the erroneously characterized sections, the Regional Administrator may grant these extensions where appropriate. In addition, if these recharacterized sections are unable to be adopted by January 1, 1989, the Regional Administrator may further extend the deadlines, taking into account the State's regulatory and/or legislative procedures.

Dated: March 4, 1988.

J.W. McGraw,

Acting Assistant Administrator for Office of Solid Waste and Emergency Response.

The following correction is made in the preamble for [SWH-FRL2891-9] (FR Doc. 86-6368), Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements published in the *Federal Register* issue of May 2, 1986 (51 FR 16422).

On page 16442, column three, the third full paragraph, the list of sections containing provisions that are considered less stringent than or a reduction in the scope of the previous Federal requirements is corrected to read as follows: "Those provisions appear in Sections: 264.112(a)(2), 264.112(b)(7), 264.112(d)(1), 264.112(e), 264.113(a), 265.112(a), 265.112(b)(7), 265.112(e), and 265.113(a)."

[FR Doc. 88-5286 Filed 3-9-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

41 CFR Part 50-201

General Regulations Under the Walsh-Healey Public Contract Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is revising the regulatory provisions regarding the involvement of the Small Business Administration (SBA) in the administrative procedures for determining whether a small business concern qualifies for award of Government supply contracts as either a "manufacturer" or "regular dealer," to whom the award of covered contracts is restricted by the Walsh-Healey Public Contracts Act (PCA). SBA requested revisions to the regulations which would eliminate the provision for SBA to render PCA eligibility determinations in protest cases in which the contracting officer has found a small business bidder to be eligible under the PCA. Additional revisions will streamline the processing of eligibility determination cases between the contracting agencies, SBA, and the DOL and help speed up procurement activities in certain instances.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT:

Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8305. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On March 13, 1987, the Department of Labor (DOL) published in the *Federal Register* (52 FR 7892) proposed changes to 41 CFR 50-201.101(b), containing the administrative procedures to be followed by contracting agencies, SBA, and DOL in determining the eligibility status of business concerns as either "manufacturers" or "regular dealers," as required for award of Government contracts subject to the PCA. Persons interested in the rulemaking were allowed 60 days to submit comments. Four comments were received from Federal agencies. This document provides the text of the final rule and explains any changes from the proposal that were made in response to the comments received.

Background

The PCA provides labor standards for employee working on Federal contracts in excess of \$10,000 calling for the manufacturer or furnishing of materials, supplies, articles or equipment. Section 1(a) of the PCA provides that contracts subject to the Act may only be awarded to a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. Contracting agencies must determine in the first instance whether a bidder in line for contract award qualified for award according to criteria in DOL regulations (41 CFR Parts 50-201 and 50-206). Such agency determinations are subject to review by DOL. In cases involving small businesses, the Small Business Act, as amended, however, empowers the SBA to overturn, on review, a contracting agency's finding of ineligibility and to certify a small business to be eligible to perform a particular government contract.

As set forth in 41 CFR 50-201.101(b), the present procedures for small businesses require SBA review of all contracting agency findings of ineligibility, as well as all protests which challenge an agency's finding of eligibility. SBA requested revisions to the existing regulations which would eliminate SBA review under the following circumstances: (1) Competitor protest cases which challenge the contracting officer's determination, after

review of the protest, that a small business firm is eligible under PCA; (2) Cases involving contracts awarded by agencies which are not subject to the Small Business Act because they are outside the Executive Branch (e.g., contracts with the U.S. Postal Service and District of Columbia Government); and (3) Cases where either the contracting officer or SBA has found that the firm is to be denied award for procurement reasons other than a finding of ineligibility under PCA (e.g., determination of "non-responsibility" where SBA has declined to issue a Certificate of Competency).

SBA also requested revisions to provide that if a firm did not contest the initial finding of ineligibility and submitted no information on its own behalf to SBA, such ineligibility determination would become final and would not be referred by SBA to DOL. However, it was determined upon review that since the language of section 8(b)(7)(B) of the Small Business Act mandates that SBA forward such cases to the Secretary of Labor for final disposition, this part of SBA's request was precluded by law and could not, therefore, be adopted by regulation.

Summary of Comments

SBA suggested that the reference in the proposal to "Administrator of the Small Business Administration" be changed to reflect SBA's current regional operating structure, under which questions as to a small business concern's eligibility are currently referred to the appropriate regional office of SBA for the location of the affected business concern. The regulation will be revised in appropriate places to add "authorized representative," to address SBA's suggestion.

The Defense Logistics Agency (DLA) recommended changes to proposed § 50-201.101(b)(6), pertaining to the award of contracts under emergency conditions prior to receiving an eligibility determination. The proposed section provided that contract awards would be held in abeyance until a final determination is rendered in those cases subject to SBA review. DLA suggested that, in order to be consistent with a pending change in the governmentwide Federal Acquisition Regulation (48 CFR 22.608-4; FAR Case 84-53), award should be held in abeyance in such cases until the contracting officer receives a determination of eligibility from SBA, or notification that SBA has forwarded the case to DOL for review. This would allow SBA the appropriate opportunity for review as provided in the Small Business Act (15 U.S.C.

637(b)(7)(B)), yet not indefinitely delay the award unnecessarily in cases of exigency, where the items are urgently required or a failure to make the award promptly would create substantial hardship for the Government. DLA's suggestion is a constructive one, and it will be adopted.

The General Services Administration (GSA) recommended that the effective date of the final rule be delayed sufficiently to allow the Federal Acquisition Regulation to be modified to conform to this rule, and thus avoid confusion that might be created from conflicting rules. For this reason, the effective date of this rule will be delayed for sixty days following the date of publication in the **Federal Register**, until May 9, 1988.

Although no change was proposed in the regulation concerning the circumstances in which agencies must investigate and affirmatively determine the Walsh-Healey eligibility status of a bidder, GSA recommended that more weight be placed on the self-certification of the offeror in determining eligibility. GSA suggested deleting subparagraph (b)(2)(i), which precludes reliance on the representation of a bidder if that bidder is in line for award and has not previously been awarded a contract subject to the Act by the individual procuring office, and/or if a pre-award investigation or survey of the bidder's operations is otherwise being made to determine the bidder's technical and production capability, plant facilities and equipment, and subcontracting and labor resources.

The language of the Act and its legislative history makes clear Congress' intent that covered contracts are to be awarded only to contractors who are currently capable of qualifying for award under the Act as a bona fide manufacturer or a bona fide regular dealer. If the legislative purposes are to be effectively achieved, the contracting agency must obtain and consider evidence which affirmatively shows that the eligibility standards are, in fact, presently met prior to any award of a contract subject to the Act. To permit otherwise would serve to encourage the very abuses which Congress sought to eliminate. Moreover, there is no adequate remedy available to correct the error after the fact, other than disrupting the procurement, if a firm that is not eligible under PCA is incorrectly awarded a contract subject to the Act. The only possible recourse is for the Government to exercise its right to terminate the contract and enter into other contracts or make open market purchases, as provided in 41 CFR 50-

201.101(a)(3)(i)(B), when a bidder does not act in good faith and misrepresents its PCA eligibility status.

For these reasons, the existing regulations have long provided that a bidder's mere representation or affirmation that it qualifies under the Act is insufficient (see 41 CFR 50-206.51(d)), and, further, that a bidder's eligibility status on a previous PCA contract or its performance as a subcontractor on PCA contracts are not determinative of the bidder's present eligibility status (see 41 CFR 50-206.51(g)). On balance, when viewed in the context of the Act's legislative intent, the Department does not believe that sufficient justification has been presented to warrant deleting, as GSA proposes, the longstanding criteria in 41 CFR 50-201.101(b)(2)(i) for when to conduct preaward investigations of a bidder's PCA qualifications. Accordingly, the current policies will be maintained.

Classification—Executive Order 12291

This rule is procedural in character. It is not classified as a "major rule" under Executive Order 12291 on Federal Regulation because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department included an Initial Regulatory Flexibility Analysis in its Notice of Proposed Rulemaking published on March 13, 1987 (52 FR 7893). That analysis concluded that the revised rule would not, if adopted, have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act. No comments were received on any aspect of this analysis. Accordingly, the Initial Analysis is being adopted as the Final Regulatory Flexibility Analysis, without change. Members of the public may obtain copies of the analysis from the **Federal Register** of March 13, 1987 (52 FR 7893-94), or by contacting the Wage and Hour Division at the address and telephone

number listed above under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 41 CFR Part 50-201

Administrative practice and procedure, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, for the reasons set out in the preamble, 41 CFR 50-201.101(b) is revised as set forth below.

Signed at Washington, DC, this 4th day of March 1988.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

41 CFR Part 50-201 is amended as follows:

PART 50-201—GENERAL REGULATIONS

1. The authority citation for Part 50-201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50-201.101, paragraph (b) is revised to read as follows:

§ 50-201.101 Manufacturer or regular dealer.

(b) *Determination of eligibility.* (1) The responsibility for applying the stated eligibility requirements to determine before award whether a bidder qualifies as a manufacturer or regular dealer rests in the first instance with the contracting agency pursuant to authority delegated by the Secretary of Labor in accordance with section 4 of the Act. (Circular Letter 8-61.) Contracting agencies shall obtain and consider all available factual evidence essential to eligibility determinations for all bidders in line for award of contracts subject to the Act. Any decision of the contracting agency is subject to review by the Department of Labor according to the procedures outlined below. The

Department of Labor shall give great weight to the technical knowledge and expertise of the contracting agencies and shall uphold the contracting agencies' initial determinations unless the determinations are found to be arbitrary, capricious or otherwise not in accordance with the evidence presented or with the law. The decision of the Department of Labor shall be final with respect to the procurement or procurements at issue. The Department of Labor may determine the qualifications of a bidder in the first instance in the absence of any decision by the contracting agency.

(2) The contracting agency shall investigate and determine the Walsh Healey eligibility status of a bidder and shall not merely rely on the representation or affirmation of a bidder in at least the following circumstances:

(i) Where the bidder (or bidders) in line for contract award has not previously been awarded a contract subject to the Act by the individual procuring office and/or where a preaward investigation or survey of such bidder's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, subcontracting and labor resources of such bidder (or bidders).

(ii) Where there is a protest of a bidder's eligibility; and

(iii) Where a contracting officer has reason to question a bidder's eligibility, such as where the proposed place of contract performance and shipment is other than the location of the bidder's place of business.

(3) If the contracting officer determines that an apparently successful bidder or offeror that is *not* a small business concern is ineligible, the contracting officer shall (i) promptly notify the bidder or offeror in writing that:

(A) It does not meet the eligibility requirements, and the specific reason therefor; and

(B) It may protest such determination by submitting any evidence concerning its eligibility to the contracting officer within a reasonable time as set by the contracting officer.

(ii) If, after review of the evidence submitted by the bidder or offeror, the contracting officer does not reverse the decision, the contracting officer shall notify the bidder or offeror of the determination and the reasons therefor.

(iii) If the bidder or offeror still disagrees with the finding, the bidder's or offeror's protest, together with all pertinent evidence, will be forwarded to the Administrator of the Wage and Hour Division of the Department of Labor for

a final determination, and the bidder or offeror will be so notified.

(iv) If a bidder has been conclusively denied award for procurement reasons other than a finding of ineligibility under the Walsh-Healey Act (e.g., a finding of nonresponsibility), the Walsh-Healey eligibility status becomes moot and the case need not be processed further, regardless of whether the contracting officer rendered an initial finding of ineligibility under Walsh-Healey.

(4) In the case of a small business concern, the notification and protest procedures in paragraph (b)(3) of this section, shall be followed except that any finding of ineligibility rendered by an agency of the executive branch subject to the requirements of the Small Business Act (15 U.S.C. 637c.) shall be forwarded with all pertinent evidence to the Administrator of the Small Business Administration, or authorized representative, whether or not the small business concern protests the determination, and the bidder or offeror shall be so notified. The Administrator of the Small Business Administration, or authorized representative, shall review the finding of the contracting officer and shall either dismiss it and certify the small business concern to be eligible for the contract award in question, or if it concurs in the finding, forward the matter to the Administrator of the Wage and Hour Division for a final determination, in which case the Small Business Administration may certify the small business concern only if the Wage and Hour Division finds the small business concern to be eligible. The Small Business Administration is bound by the regulations and interpretations of the Department of Labor in making its determinations of eligibility under the Walsh-Healey Act.

(5) When another bidder or offeror challenges the eligibility of the apparently successful bidder or offeror prior to award, the contracting officer shall promptly notify the protestor and the apparently successful bidder or offeror in writing that:

(i) They may submit evidence concerning the matter to the contracting officer within a reasonable time as set by the contracting officer; and

(ii) After review of such evidence the contracting officer will direct a preaward survey, if necessary, and reach a decision on all the evidence and notify the protestor and successful bidder of his/her finding. If either party disagrees with the finding, the contracting officer shall notify the parties and then forward the decision and entire record to the Administrator of the Wage and Hour Division for a final

determination. However, if the apparently successful bidder or offeror is a small business concern and the contracting officer has found the small business concern to be ineligible, the protest and all pertinent evidence will be forwarded to the authorized representative of the Administrator of the Small Business Administration, and the procedures set forth in § 50-201.101(b)(4) shall be followed.

(6)(i) If the contracting officer forwards the case to the Small Business Administration for review of eligibility under the Act pursuant to § 50-201.101(b) (4) or (5), award will be held in abeyance until the contracting officer receives a determination of eligibility from the Small Business Administration or notification that the Small Business Administration has forwarded the case to the Department of Labor. (ii) If the contracting officer or the Small Business Administration forwards a case to the Department of Labor for review of eligibility under the Act, award will be held in abeyance until the contracting officer receives a final determination from the Department of Labor, unless the contracting officer finds that award should be made immediately because:

(A) The items to be procured are urgently required; or

(B) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(iii) If the contracting officer decides to proceed with the award, the contracting officer shall give written notice of the decision to proceed to the protester, the Department of Labor and to other concerned parties.

(iv) If an award is made under paragraph (b)(6)(ii) of this section, the contracting officer shall submit to the Department of Labor documentation explaining the need for making an award prior to the receipt of a final determination from the Administrator of the Wage and Hour Division.

(7) A protest received after award, but before final completion of the contract, shall be investigated and processed under the provisions outlined in paragraph (b)(5) of this section and forwarded to the Department of Labor, and the protestor shall be so notified.

(8) If the contract has been completed before receipt of the protest, the protester shall be notified that no action will be taken on the protest.

[FR Doc. 88-5230 Filed 3-9-88; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12

Surplus Real Property—Use for Facilities To Assist the Homeless

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services amends its regulations at 45 CFR Part 12, "Disposal and Utilization of Surplus Real Property for Public Health Services," to permit the lease of surplus Federal real property to assist the homeless. These amendments allow the implementation of Title V of the Stewart B. McKinney Homeless Assistance Act.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Wyman Williams (202) 245-7426.

SUPPLEMENTARY INFORMATION: On July 22, 1987, the President signed Pub. L. 100-77, the "Stewart B. McKinney Homeless Assistance Act." Title V of that Act provides for the identification and use of surplus Federal property for facilities to assist the homeless. Section 501(d)(2) of that Act directs the Secretary of Health and Human Services to issue regulations permitting leases of surplus Federal buildings and other real property for use for facilities to assist the homeless. That section further provides that the use of such property is to be included as a permissible use in the protection of public health within the meaning of section 203(k) of the Federal Property and Administrative Services Act of 1949.

This Department's regulations under the Federal Property and Administrative Services Act of 1949 are found at 45 CFR Part 12. Based on the requirements of the Act referred to above, we are amending these regulations to permit the lease of surplus Federal real property for facilities to assist the homeless. Section 12.3(e) is amended to identify the provision of assistance to the homeless as one of the purposes for which property may be provided under the Federal Property and Administrative Services Act of 1949. In addition, the table set forth as Exhibit A to 45 CFR Part 12 is amended to permit a public benefit allowance of 100 percent for leases of property to assist the homeless. This amendment permits the leases to be executed without a requirement of payment to the Federal government by the organization providing assistance to the homeless.

The regulation is further amended to permit, for purposes of leases within the

scope of Title V of Pub. L. 100-77, the lease of surplus Federal real property to nonprofit organizations, whether or not they are tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code. While the tax-exempt requirement normally applies to entities seeking the use of surplus property under Part 12, because section 501(c) of Pub. L. 100-77 identifies eligible applicants as "private nonprofit organizations, units of local government, and States," the Department has concluded that Congress intended that any nonprofit organization be eligible to obtain a lease for purposes of assisting the homeless. Accordingly, we are amending section 12.1(j) and section 12.3(b) to permit leases for purposes of assisting the homeless to any nonprofit organization.

Waiver of Proposed Rulemaking and of Delayed Effective Date

Because the amendments set forth below simply incorporate into existing regulations the statutory provisions of Pub. L. 100-77, and because the speedy implementation of this program of assistance to the homeless will benefit the intended beneficiaries of this legislation, the Secretary has determined that proposed rulemaking is unnecessary and not in the public interest and that there is good cause for waiving such requirement. On the same basis, the Secretary has determined that there is good cause for making these regulations effective upon publication.

The Department will monitor the implementation of this program and, should matters arise where further amendment to these regulations with respect to the homeless assistance program is needed, we will undertake further rulemaking as appropriate.

E.O. 12291

This rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981. It is unlikely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that this rule will not have a significant economic

impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under control number 0990-0148.

List of Subjects in 45 CFR Part 12

Public health, reporting and recordkeeping requirements, surplus government property.

Dated: February 10, 1988.

Otis R. Bowen,
Secretary.

PART 12—[AMENDED]

Accordingly, 45 CFR Part 12 is amended as follows:

1. The Authority citation for 45 CFR Part 12 is amended by removing the period and adding:

Authority: * * *, sec. 501 of Pub. L. 100-77, 101 Stat. 509-10, 42 USC 11411.

§ 12.1 [Amended]

2. 45 CFR 12.1(j) is revised to read as follows:

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

§ 12.3 [Amended]

3. 45 CFR 12.3(b) is revised to read as follows:

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and nonprofit public health institutions which (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

4. 45 CFR 12.3(e) is revised to read as follows:

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm, clinical services, other public health services (including water and sewer), or similar services devoted primarily to the promotion and protection of public health. In addition, organizations which provide assistance to the homeless may be eligible for leases under Title V of Pub. L. 100-77. Except for services to the homeless, services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

Exhibit A—Public Benefit Allowance for Transfer of Real Property for Health Purposes [Amended]

5. Exhibit A to 45 CFR Part 12 is amended by adding at the bottom of the "Classification" column "Assistance to the Homeless" and in the corresponding locations at the bottom of the "Basic public benefit allowance" and "maximum public benefit allowance" columns "2100".

[FR Doc. 88-5297 Filed 3-9-88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193

[CGD 84-044]

Hazardous Materials Used as Ships' Stores On Board Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the rules for hazardous materials used as ships' stores on board vessels. Except for minor amendments, the present rules have remained unchanged since January 18, 1941. Many of the citations, terms, and definitions have become outdated. This revision updates the text and replaces lengthy tables by cross referencing existing Department of Transportation Hazardous Materials regulations and Consumer Product Safety Commission labeling regulations. It also eliminates the requirement for

hazardous materials to be certified for use as ships' stores on board vessels to reduce the paperwork burden for industry and the Coast Guard, while maintaining the current level of safety. Materials presently listed which are no longer used as ships' stores are removed.

DATES: This rule is effective on April 11, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Rivkin, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267-1217.

SUPPLEMENTARY INFORMATION: On July 7, 1987, a notice of proposed rulemaking, entitled "Hazardous Materials Used as Ships' Stores Aboard Vessels", was published in the *Federal Register* (52 FR 25409). The Coast Guard received two written comments on this proposed rulemaking. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this rule are Mr. Carl Rivkin, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Projects

On March 22, 1984, the Coast Guard published a notice of proposed rulemaking in the *Federal Register*, entitled "Carriage and Use of Liquefied and Non-liquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire" (57 FR 10685), which would allow the use of liquefied petroleum gas (LPG) and compressed natural gas (CNG) as fuel for cooking on passenger vessels (CGD 83-013). The requirements in this rule (CGD 84-044) relating to cooking fuels (§ 147.50) restate the previous regulations. This section will be amended, if necessary, to conform to CGD 83-013, above, when that rulemaking is published as a final rule.

Under a separate rulemaking project, entitled "Revision of the Regulations on Outer Continental Shelf Activities" (CGD 84-098), the Coast Guard plans to propose that the hazardous ships' stores regulations be made applicable to OCS facilities. The hazards associated with the use of these materials on OCS facilities is comparable to those on vessels. Comments on this project

should reference docket number CGD 84-098.

Discussion of Comments Received

One comment requested that cylinders manufactured in foreign countries that are not Department of Transportation (DOT) approved be permitted for use in containing compressed gases for use as ships' stores on U.S. vessels when cylinders that meet DOT specifications are not available. Because there are no international standards for the manufacture of cylinders, the Coast Guard cannot give an alternate requirement for foreign cylinders. The use of foreign cylinders will be considered under the general waiver provision (§ 147.9). Therefore, the requirement in § 147.60(a)(2) that DOT specification cylinders be used was not changed.

One comment questioned the need for volume limitations for the carriage of acetylene and oxygen in the previous and proposed rules. It stated that those limitations are impracticable for vessels involved in industrial operations (e.g. pipe laying, diving, and offshore drilling) and should be removed for those vessels. Sections 147.70 and 147.85 in the final rule do not have acetylene and oxygen volume limitations for vessels engaged in industrial operations. This lifting of the volume limitation for vessels engaged in industrial operations is made with the qualification that they meet the safety requirements for acetylene and oxygen carried as packaged cargo. Though this qualification will allow vessels engaged in industrial activities to carry more acetylene and oxygen than the previous or proposed rules provide, it will ensure that an acceptable level of safety can be maintained without hindering industrial operations.

Discussion of Changes to the Notice

1. The limits in the proposed §§ 147.70 and 147.85 for acetylene and oxygen on board vessels for use as ships' stores were dropped for vessels engaged in industrial operations, as discussed in the "Discussion of Comments Received" section.

2. Under the notice of proposed rulemaking, hazardous materials not listed by name in proposed § 147.27 would have to be certified by the Coast Guard under proposed § 147.22 before they could be carried on board vessels as ships' stores. Under proposed § 147.30, both materials listed by name and materials certified for carriage would have to meet basically the same labeling requirements. The only exception was for "consumer

commodities", as defined in § 147.3. Consumer commodities would not have to be listed by name or be certified but would be permitted on board if they were labeled under § 147.30 or under the Federal Hazardous Substance Act regulations in 16 CFR Part 1500.

After reconsidering this process, the Coast Guard has determined that it can ensure the same level of safety without certifying hazardous materials as ships' stores and has therefore, eliminated the certification requirements in the final rule. The end result would be that a "hazardous material" (as defined in § 147.3 and 49 CFR 171.8) may be carried on board a vessel for use as ships' stores if it meets the labeling requirements of § 147.30 and the stowage and special requirements, listed in Subpart B. With the elimination of certification, all existing certificates are null and void (§ 147.1(c)).

In addition to reducing the administrative and paperwork burden on industry and the Coast Guard, deletion of the certification process will also eliminate the confusion surrounding the certification program. Frequently, purchasers of certified products are led to believe by vendors that "certified by the Coast Guard" meant that the Coast Guard had approved the product as being effective for its intended purpose, as well as eligible to be carried on board a vessel as ships' stores. Approval of the product's effectiveness was never intended by the Coast Guard.

3. New § 147.40 is added to require Coast Guard approval before Class A Explosives, Class A poisons, forbidden materials listed in 49 CFR 172.101, and flammable gases not specifically named in Subpart B of Part 147 are permitted on board vessels as ships' stores. These materials are unusually dangerous and will likely require that special precautions be followed to be permitted on board vessels as ships' stores. Coast Guard approval of these materials as ships' stores is effectively the same as certification under the previous and proposed rules. Therefore, no new burdens are imposed by this provision.

4. The final rule contains a new requirement (§ 147.60(a)(1)) that compressed gas cylinders be used only for the materials for which the cylinders are authorized. The absence of this requirement in the notice was an oversight. The intent and common understanding of these regulations, as well as the previous regulations, has always been that compressed gases must be put in cylinders for which they are authorized. The correction of this oversight is a clerical change and not an extension of the requirements stated in the notice.

5. In § 147.100 on radioactive materials, the phrase "used as radioactive tracers or sealed sources" was inserted in the proposal to give examples of the radioactive materials being addressed. Because it can be misconstrued as limiting the materials addressed to those used as tracers or sealed sources, the phrase is deleted in the final rule. It is intended that all radioactive materials on board meet the Nuclear Regulatory Commission's regulations.

6. In proposed § 147.65(c) on carbon dioxide and halon fire extinguishing systems, the cross reference to § 147.60(a)(2) for re-marking and retesting requirements was incorrect. The final rule substitutes the correct references (§ 147.60(a)(3) and (a)(4)). Paragraph (a)(2) concerns construction, not re-marking and testing.

7. In § 147.95(c), the container requirements for ships' signals and emergency equipment were overly stringent and were changed to give more latitude in the choice of containers.

Incorporation by Reference

The following material has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR Part 51:

American Boat and Yacht Council, Inc. (ABYC)

ABYC H-25-81—Portable Fuel Systems and Portable Containers for Flammable Liquids, May 12, 1981.

American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE)

ANSI/ASHRAE 34-78—Number Designation of Refrigerants, approved 1978.

Public Health Service, Department of Health and Human Services (DHHS)

DHHS Publication No. (PHS) 84-2024—The Ships' Medicine Chest and Medical Aid at Sea, revised 1984.

Underwriters Laboratories, Inc. (UL):
UL 30—Standard for Metal Safety Cans, 7th Ed. March 11, 1985, revised March 12, 1985 and March 3, 1987.

UL 1185—Standard for Portable Marine Fuel Tanks, Second Edition, March 13, 1978, revised July 6, 1984.

UL 1313—Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., March 15, 1982, revised January 3, 1984 and March 22, 1985.

UL 1314—Standard for Special-Purpose Containers, 1st Ed., July 7, 1983, revised February 7, 1984 and September 23, 1986.

The material incorporated by reference is on file at the Library of the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC 20408 and is available for inspection or copying at Coast Guard Headquarters, Hazardous Materials Branch, Room 1214, 2100 Second Street SW., Washington, DC 20593-0001. Copies of the material may be purchased at the addresses listed in § 147.7(c).

If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations has been found to be so minimal that further evaluation is unnecessary.

The principal objectives of this rule are to simplify previous requirements and to update the regulations to take into account changes in laws and related regulations. This rule does not increase costs already imposed by the previous regulations but reduces overall costs for both industry and the Coast Guard.

Under the previous regulations, manufacturers of hazardous products intended for use as ships' stores had to apply first to the Coast Guard in writing to obtain a ships' stores certificate for their product. This rule eliminates the need for Coast Guard certification of hazardous ships' stores and saves the applicants approximately \$347.00 per application. For the approximately 40 new applications received each year, the industry wide savings will be approximately \$13,880.00. In addition, the Coast Guard will save the approximately 120 manhours (\$1744.00) required annually to process these applications. This reduction in paperwork costs to industry and the Coast Guard is twice the amount stated in the notice. The reason for this increase in savings is due to the fact that, of the approximately 40 applications received each year, the proposal would have eliminated only about 20; whereas, with the complete removal of certification, all 40 applications would be eliminated.

Also, this rule eliminates the need to have certificates renewed every three years (existing 46 CFR 147.03-9). This change will save industry approximately

\$28.00 per renewal for the approximately 48 certificates due for renewal each year and save the Coast Guard approximately 72 manhours per year or \$946.40.

In the notice of proposed rulemaking, certain classes of hazardous materials, i.e., flammable gases not named in the regulations, Class A Explosives, Class A Poisons, and forbidden materials listed in 49 CFR Part 172.101, would require certification to be used as ships' stores. In the final rule, these classes of materials require Commandant (G-MTH) approval to be used as ships' stores aboard vessels and a list of approved materials will be maintained by Commandant (G-MTH). There have been no requests for certification of any material that falls into these classes for use as ships' stores. Therefore, there probably will be few, if any, requests for Commandant (G-MTH) approval and little, if any, resulting paperwork burden.

Coast Guard inspections of vessels to determine compliance with Part 147 are conducted at the same time as other planned or routine inspections. This rule does not require added manpower.

In conclusion, this rule creates no new costs, but reduces applicant and Coast Guard costs and simplifies the regulations for the maritime industry.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether this rule is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

As described in the Regulatory Evaluation section above, the effect of this rule is to reduce Coast Guard and industry costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection requirements in the following sections: §§ 147.9, 147.30, 147.40, and 147.60(c)(2). These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. Part 147 has been assigned OMB Control Number 2115-0139.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and

concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule revises existing regulations to improve formatting and readability and to remove materials no longer used as ships' stores.

List of Subjects

46 CFR Part 2

Fire protection, Law enforcement, Marine safety, Penalties, Vessels.

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine safety, Tank vessels.

46 CFR Part 34

Barges, Fire prevention, Marine safety, Tank vessels.

46 CFR Part 58

Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 71

Foreign trade, Law enforcement, Marine safety, Passenger vessels, Reporting requirements.

46 CFR Part 76

Marine safety, Passenger vessels.

46 CFR Part 91

Cargo vessels, Law enforcement, Marine safety, Reporting requirements.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 107

Continental shelf, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 108

Continental shelf, Fire prevention, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 109

Continental shelf, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Reporting requirements, Vessels.

46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting requirements.

46 CFR Part 147

Arms and munitions, Explosives, Hazardous materials transportation,

Incorporation by reference, Marine safety, Radioactive materials, Reporting requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting requirements.

46 CFR Part 176

Marine safety, Passenger vessels.

46 CFR Part 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 189

Marine safety, Oceanographic vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic vessels.

For the reasons set out in the preamble, Title 46, Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193 of the Code of Federal Regulations are amended as follows:

PART 2—VESSEL INSPECTIONS

1. The authority citation for Part 2 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

2. By revising § 2.75-60 to read as follows:

§ 2.75-60 Hazardous ships' stores.

Hazardous ships' stores, as defined in § 147.3 of this chapter, must not be brought on board or used on any vessel unless they meet the requirements of Part 147 of this chapter.

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for Part 31 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

4. In § 31.10-18, by revising Table 31.10-18(b), footnote 1, and Table 31.10-18(c), footnote 1, to read as follows:

§ 31.10-18 Fire fighting equipment: General — TB/ALL.

()

(b) *

TABLE 31.10-18(b)

¹ Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

()

(c) *

TABLE 31.10-18(c)

¹ Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

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PART 34—FIRE FIGHTING EQUIPMENT

5. The authority citation for Part 34 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

6. In § 34.15-20, by revising paragraph (i) to read as follows:

§ 34.15-20 Carbon dioxide storage—T/ALL.

()

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

()

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

7. The authority citation for Part 58 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

8. In § 58.20-5, by revising paragraph (b) to read as follows:

§ 58.20-5 Design.

()

(b) For refrigeration systems other than those for reliquefaction of cargo, only those refrigerants under § 147.90 of this chapter are allowed.

PART 71—INSPECTION AND CERTIFICATION

9. The authority citation for Part 71 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

10. In § 71.25-20, by revising Table 71.25-20(a)(1), footnote 1, and Table 71.25-20(a)(2), footnote 1, to read as follows:

§ 71.25-20 Fire detecting and extinguishing equipment.

(a) *

(1) *

TABLE 71.25-20(a)(1)

¹ Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

()

(2) *

TABLE 71.25-20(a)(2)

¹ Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

()

PART 76—FIRE PROTECTION EQUIPMENT

11. The authority citation for Part 76 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

12. In § 76.15-20, by revising paragraph (i) to read as follows:

§ 76.15-20 Carbon dioxide storage.

()

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 91—INSPECTION AND CERTIFICATION

13. The authority citation for Part 91 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

14. In § 91.25-20, by revising Table 91.25-20(a)(1), footnote 1, and Table 91.25-20(a)(2), footnote 1, to read as follows:

§ 91.25-20 Fire extinguishing equipment.

(a) *

(1) *

TABLE 91.25-20(a)(1)

¹ Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

()

(2) *

TABLE 91.25-20(a)(2)

¹ Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

()

PART 95—FIRE PROTECTION EQUIPMENT

15. The authority citation for Part 95 is revised to read as follows:

Authority: 43 U.S.C. 3306; 49 CFR 1.46.

16. In § 95.15-20, by revising paragraph (i) to read as follows:

§ 95.15-20 Carbon dioxide storage.

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 107—INSPECTION AND CERTIFICATION

17. The authority citation for Part 107 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46 Section 107.05 also issued under 44 U.S.C. 3507; 49 CFR 1.45.

18. In § 107.235, by revising the note following paragraph (b)(3) to read as follows:

§ 107.235 Servicing of hand portable fire extinguishers, semi-portable fire extinguishers and fixed fire-extinguishing systems.

(b) * * *

Note.—All carbon dioxide cylinders and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 108—DESIGN AND EQUIPMENT

19. The authority citation for Part 108 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46.

20. In § 108.431, by revising the section heading and adding a new paragraph (c) to read as follows:

§ 108.431 Carbon dioxide systems: General.

(c) Each carbon dioxide system cylinder must be fabricated, tested, and marked in accordance with § 147.60 and 147.65 of this chapter.

§ 108.451 [Amended]

21. In § 108.451, by removing paragraph (h).

PART 109—OPERATIONS

22. The authority citation for Part 109 is revised to read as follows and all other authority citations are removed:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46. Sections 109.411 and 109.413 also issued under 46 U.S.C. 6101. Section 109.431 also issued under 46 U.S.C. 10104.

23. By revising § 109.558 to read as follows:

§ 109.558 Hazardous ships' stores.

The master or person in charge shall ensure that hazardous ships' stores, as the term is defined in § 147.3 of this chapter, which are on board a unit are labeled, stowed, and used only in accordance with Part 147 of this chapter.

PART 146—TRANSPORTATION OR STORAGE OF MILITARY EXPLOSIVES ON BOARD VESSELS

24. The authority citation for Part 146 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

25. In § 146.01-5, by revising paragraph (b) to read as follows:

§ 146.01-5 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) Display.

Subchapter N part or section where identified or described	Current OMB Control No.
§ 146.02-20	2115-0054
§ 146.29-13	2115-0013
Part 147	2115-0139

26. By revising Part 147 to read as follows:

PART 147—HAZARDOUS SHIPS' STORES

Subpart A—General Provisions

Sec.

147.1 Purpose and applicability.

147.3 Definitions.

147.5 Commandant (G-MTH); address.

147.7 Incorporation by reference.

147.9 Waivers.

147.15 Hazardous ships' stores permitted on board vessels.

147.30 Labeling.

Subpart B—Stowage and Other Special Requirements for Particular Materials

147.35 Purpose of subpart.

147.40 Materials requiring Commandant (G-MTH) approval.

147.45 Flammable and combustible liquids.

147.50 Fuel for cooking, heating, and lighting.

147.60 Compressed gases.

147.65 Carbon dioxide and halon fire extinguishing systems.

147.70 Acetylene.

147.85 Oxygen.

147.90 Refrigerants.

147.95 Explosives.

147.100 Radioactive materials.

147.105 Anesthetics, drugs, and medicines.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 147.1 Purpose and applicability.

(a) This part prescribes regulations designating what hazardous materials may be on board vessels as ships' stores and prescribes requirements for the labeling, stowage, and use of those materials.

(b) This part applies to all vessels listed in 46 U.S.C. 3301 as subject to inspection under Part B of 46 U.S.C. Subtitle II. On foreign vessels in the navigable waters of the United States, the Captain of the Port or District Commander may prohibit the unsafe use or stowage of hazardous ships' stores under 33 CFR 160.109.

(c) All certifications previously issued by the Coast Guard under this part permitting the use of particular materials or products as ships' stores are null and void.

§ 147.3 Definitions.

As used in this part:

"Accommodation, control, or service spaces" means living quarters, including walkways, dining rooms, galleys, pantries, lounges, lavatories, cabins, staterooms, offices, hospitals, cinemas, and game and hobby rooms; areas containing controls for equipment and navigation; workshops, other than those forming part of machinery spaces; and store rooms adjacent to these spaces.

"Combustible liquid" means "combustible liquid" as the term is defined in 49 CFR 173.115(b).

"Compressed gas" means "compressed gas" as the term is defined in 49 CFR 173.300.

"Consumer commodity" means a commodity, such as a polish, insecticide, cleaning compound, or distillate, that is packaged and distributed in a form and quantity intended for sale through retail sales establishments.

"Flammable liquid" means "flammable liquid" as the term is defined in 49 CFR 173.115(a).

"Hazardous material" means "hazardous material" as the term is defined in 49 CFR 171.8.

"Hazardous ships' stores" means ships' stores that are hazardous materials.

"Proper shipping name" means the name of the hazardous ships' stores shown in Roman print (not in italics) in 49 CFR 172.101.

"Ships' stores" means materials which are on board a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel (except for fumigants under Part 147A of this chapter, for fuel and compressed air used for the vessel's primary propulsion).

machinery, or for fixed auxiliary equipment) or for the safety or comfort of the vessel's passengers or crew.

"Technical name" means the recognized chemical name used in scientific or technical publications.

§ 147.5 Commandant (G-MTH); address.

Commandant (G-MTH) is the Marine Technical and Hazardous Materials Division of the Coast Guard Office of Marine Safety, Security and Environmental Protection. The address is Commandant (G-MTH-1), U.S. Coast Guard Headquarters, Washington, DC 20593-0001, and the telephone number is (202) 267-1577.

§ 147.7 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. To enforce any edition other than the one listed in paragraph (c) of this section, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408 and at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY 11701

ABYC H-25-81—Portable Fuel Systems and Portable Containers for Flammable Liquids, May 12, 1981.

American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE).

Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329

ANSI/ASHRAE 34-78—Number Designation of Refrigerants, approved 1978.

Public Health Service, Department of Health and Human Services (DHHS).

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

DHHS Publication No. (PHS) 84-2024—The Ship's Medicine Chest and Medical Aid at Sea, revised 1984.

Underwriters Laboratories, Inc. (UL), Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062

UL 30—Standard for Metal Safety Cans, 7th Ed., March 11, 1985, revised March 12, 1985 and March 3, 1987.

UL 1185—Standard for Portable Marine Fuel Tanks, Second Edition, March 13, 1978, revised July 6, 1984.

UL 1313—Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., March 15, 1982, revised January 3, 1984 and March 22, 1985.

UL 1314—Standard for Special-Propose Containers, 1st Ed., July 7, 1983, revised February 7, 1984 and September 23, 1986.

§ 147.9 Waivers.

(a) Any requirement in this part may be waived on a case by case basis if it is determined by Commandant (G-MTH) that the requirement is impracticable under the circumstances and that an acceptable level of safety can be maintained.

(b) Requests for issuance of a waiver must be in writing and contain a detailed explanation of—

(1) Why the requirement is impracticable; and

(2) What measures will be taken to maintain an acceptable or equivalent level of safety.

§ 147.15 Hazardous ships' stores permitted on board vessels.

Unless prohibited under Subpart B of this part, any hazardous material may be on board a vessel as ships' stores if the material—

(a) Is labeled according to § 147.30; and

(b) Meets the requirements, if any, in Subpart B of this part applicable to the material.

§ 147.30 Labeling.

(a) Except as provided in paragraph (b) of this section, all immediate receptacles, containers, or packages containing hazardous ships' stores must be labeled in English with the following information concerning the contents:

(1) Technical name or proper shipping name.

(2) For hazardous ships' stores other than liquid fuels, manufacturer's or supplier's name and address.

(3) Hazard classification under 49 CFR 172.101 and 173.2.

(4) For hazardous ships' stores other than liquid fuels, step by step procedures for proper use.

(5) First aid instructions in the event of personnel contact, including antidotes in the event of ingestion.

(6) Stowage and segregation requirements.

(b) Hazardous ships' stores that are consumer commodities labeled in accordance with the Federal Hazardous Substances Act Regulations in 16 CFR Part 1500 need not be labeled as specified in paragraph (a) of this section.

Subpart B—Stowage and Other Special Requirements for Particular Materials

§ 147.35 Purpose of subpart.

This subpart prescribes special requirements applicable to particular, named materials. These requirements are in addition to the general requirements in Subpart A applicable to those materials.

§ 147.40 Materials requiring Commandant (G-MTH) approval.

(a) Commandant (G-MTH) approval is required before the following hazardous materials may be on board a vessel as ships' stores:

- (1) Class A poisons.
- (2) Class A explosives.
- (3) Flammable gases, other than those addressed specifically in this subpart.
- (4) Forbidden materials listed in 49 CFR 172.101.

(b) Request for approval must be submitted to the Commandant (G-MTH), identify the material, and explain the need for its use.

(c) Upon approval, the material is added to the list of materials approved under this section. A copy of this list is available from the Commandant (G-MTH) at the address in § 147.5.

§ 147.45 Flammable and combustible liquids.

(a) This section applies to the stowage and transfer of flammable and combustible liquids (including gasoline and diesel oil), other than liquids used as fuel for cooking, heating, and lighting under § 147.50.

(b) No flammable or combustible liquids may be stowed in any accommodation, control, or service space (other than a paint locker).

(c) No more than 19 liters (five gallons) of flammable liquids may be stowed in any machinery space. The flammable liquids must be in containers of 3.8 liters (one gallon) or less.

(d) No more than 208 liters (55 gallons) of combustible liquids may be stowed in any machinery space.

(e) An aggregate of more than 7.6 liters (two gallons) of flammable or combustible liquids stowed outside of an accommodation, control, or service, space (other than a paint locker) or outside of a machinery space must be stowed in a paint locker that is marked with a warning sign indicating flammable or combustible liquid storage.

(f) Flammable and combustible liquids used as fuel for portable auxiliary equipment must be stored in—

(1) Integral tanks that form part of the vessel's structure;

(2) An independent tank meeting the requirements of Subpart 58.50 of Part 58 of this chapter;

(3) A container meeting the requirements of Subpart D of 49 CFR 173.119 for the storage of flammable or combustible liquids;

(4) A portable outboard fuel tank meeting the specifications of ABYC H-25-81 or one identified by Underwriters Laboratories as meeting the specifications of UL 1185;

(5) A portable safety container identified by Underwriters Laboratories as meeting the specifications of UL 30 or UL 1313; or

(6) A portable safety container identified by Underwriters Laboratories as meeting the requirements of UL 1314.

(g) Each portable container of flammable or combustible liquid used for portable auxiliary equipment must be stowed in a paint locker or an open location designated by the master.

(h) Fuel tanks for portable auxiliary equipment using flammable or combustible liquids may only be refilled on a vessel—

(1) By using a container described in paragraphs (f)(2), (f)(4), or (f)(5) of this section which has a capacity not exceeding 23 liters (6 gallons); or

(2) In the case of portable outboard fuel tanks described in paragraph (f)(3) of this section, in accordance with paragraph (i) of this section.

(i) Portable containers or portable outboard fuel tanks may be refilled from a larger container of flammable or combustible liquid on the weather deck of a vessel, other than a small passenger vessel subject to Subchapter T of this chapter, provided that—

(1) A drip pan of adequate size is used to collect any drippings; and

(2) At least one Coast Guard approved Type B, Size I, fire extinguisher is within three meters (9.75 feet) of the refilling location.

§ 147.50 Fuel for cooking, heating, and lighting.

(a) Flammable and combustible liquids and gases not listed in this section are prohibited for cooking, heating, or lighting on any vessel, with the exception of combustible liquids on cargo vessels.

(b) Fluid alcohol is prohibited for cooking, heating, or lighting on ferry vessels. Fluid alcohol burners, where wet primed, must have a catch pan not less than $\frac{3}{4}$ of an inch deep secured inside of the frame of the stove or have the metal protection under the stove flanged up $\frac{3}{4}$ of an inch to form a pan.

(c) Containers of solidified alcohol must be secured on a fixed base.

(d) Liquefied or non-liquefied gas is prohibited for cooking, heating, or lighting on ferry and passenger vessels but may be used on other inspected vessels, if the system in which it is used meets the requirements of Subpart 58.16 of Part 58 of this Chapter or is approved by the Commandant (G-MTH).

(e) Kerosene and commercial standard fuel oil No. 1, No. 2, and No. 3 are prohibited for cooking, heating, or lighting on ferry or passenger vessels, unless the following conditions are met:

(1) Pressure or gravity feed must be used.

(2) Where wet priming is used in a cooking device, the device must have a catch pan not less than three fourths of an inch deep secured inside the frame of the device or a metal protector under the device with a least a three fourths inch flange to form a pan.

(3) Where wet priming is used, a non-flammable priming liquid must be used.

(4) Fuel tanks for fixed stoves must be separated from the stove and mounted in a location open to the atmosphere or mounted inside a compartment with an outside fill and vent.

(5) Fuel lines must have an easily accessible shut-off valve at the tank.

(6) If the fuel tank is outside of a stove compartment, a shut-off valve must be fitted at the stove.

§ 147.60 Compressed gases.

(a) *Cylinder requirements.* Cylinders used for containing hazardous ships' stores that are compressed gases must be—

(1) Authorized for the proper shipping name of the gas in accordance with 49 CFR 172.101 and 49 CFR Part 173;

(2) Constructed in accordance with Subpart C of 49 CFR Part 178 or exempted under 49 CFR Part 107;

(3) Filled, marked, and inspected in accordance with 49 CFR 173.301 through 173.308; and

(4) Except as provided in § 147.65, maintained and retested in accordance with 49 CFR 173.34

(b) *Stowage and care of cylinders.* (1) Cylinders must always be secured and, when not in use, they must be stowed in a rack in an upright position, with the valve protection cap in place.

(2) Lockers or housings must be vented to the open air near the top and bottom for positive circulation of vapors.

(3) Cylinders must be protected from all sources of heat which may cause the cylinders to be heated to a temperature higher than 130°F.

(c) *Pressure vessels other than cylinders.* Pressure vessels, other than cylinders subject to paragraph (a) of this section, used for containing ships' stores that are compressed gases must—

(1) Be constructed and inspected in accordance with Part 54 of this chapter; and

(2) Carry only nitrogen or air, unless permission is granted by Commandant (G-MTH) to do otherwise.

§ 147.65 Carbon dioxide and halon fire extinguishing systems.

(a) Carbon dioxide or halon cylinders forming part of a fixed fire extinguishing system must be retested, at least, every 12 years. If a cylinder is discharged and more than five years have elapsed since the last test, it must be retested before recharging.

(b) Carbon dioxide or halon cylinders must be rejected for further service when they—

(1) Leak;

(2) Are dented, bulging, severely corroded, or otherwise in a weakened condition;

(3) Have lost more than five percent of their tare weight; or

(4) Have been involved in a fire.

(c) Cylinders which have contained carbon dioxide or halon and have not been tested within five years must not be used to contain another compressed gas on board a vessel, unless the cylinder is retested and re-marked in accordance with § 147.60 (a)(3) and (a)(4).

(d) Flexible connections between cylinders and distribution piping of semi-portable or fixed carbon dioxide fire extinguishing systems and discharge hoses in semi-portable carbon dioxide fire extinguishing systems must be renewed or tested at a pressure of 6.9 MPa (1000 psig). At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a

two minute period. The test must be performed when the cylinders are retested.

(e) Flexible connections between cylinders and distribution piping of fixed halon fire extinguishing systems must be tested at a pressure of one and one-half times the cylinder service pressure as marked on the cylinder. At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a two minute period. The test must be performed when the cylinders are retested.

§ 147.70 Acetylene.

(a) Seventeen cubic meters (600 standard cubic feet) or less of acetylene may be stowed on or below decks on any vessel.

(b) More than 17 m³ (600 standard cubic feet) of acetylene may be on board a vessel engaged in industrial operations, if it is stowed on deck.

§ 147.85 Oxygen.

(a) Eighty five cubic meters (3000 standard cubic feet) or less of oxygen may be on board any vessel.

(b) More than 85 m³ (3000 standard cubic feet) of oxygen may be on board a vessel engaged in industrial operations, if it is stowed on deck or in a well ventilated space.

§ 147.90 Refrigerants.

(a) Only refrigerants listed in ANSI/ASHRAE 34-78 may be carried as ships' stores.

(b) Refrigerants contained in a vessel's operating system are not considered as being carried as ship's stores.

§ 147.95 Explosives.

(a) *Explosives—general.* Except as provided for elsewhere in this subchapter, explosives, as defined in 49 CFR 173.50, which are hazardous ships' stores must be stowed in a magazine which is constructed and located in accordance with 49 CFR 176.135 through 176.159.

(b) *Small arms ammunition.* (1) No person shall bring, have in their possession, or use on board a vessel any small arms ammunition, except by express permission of the master of the vessel.

(2) All small arms ammunition must be stowed in a locked metal magazine or locker. The key to the locker must be kept in the possession of the master or a person designated by the master.

(c) *Ships' signals and emergency equipment.* (1) Explosive ships' signals and emergency equipment, including pyrotechnic distress signals and line throwing equipment, must be stowed in

watertight containers or wood lined magazine chests.

(2) All pyrotechnic distress signals, rockets, and line throwing guns must be stowed in accordance with the requirements of 49 CFR 176.83.

§ 147.100 Radioactive materials.

(a) Radioactive materials must not be brought on board, used in any manner, or stored on the vessel, unless the use of the materials is authorized by a current license issued by the Nuclear Regulatory Commission (NRC) under 10 CFR Parts 30 and 34.

(b) Stowage of radioactive materials must conform to the requirements of the NRC license.

§ 147.105 Anesthetics, drugs, and medicines.

Anesthetics, drugs, and medicines must be stowed and dispensed in accordance with the DHHS Publication No. (PHS) 84-2024.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

27. The authority citation for Part 167 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

28. In § 167.45-1, by revising the section heading and paragraph (a)(8) to read as follows:

§ 167.45-1 Steam, carbon dioxide, and halon fire extinguishing systems.

(a) * * *

(8) Carbon dioxide and halon cylinders carried on board nautical school ships must be tested and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

PART 176—INSPECTION AND CERTIFICATION

29. The authority citation for Part 176 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

30. In § 176.25-25, by revising the introductory text of paragraph (c) and the introductory text of the note following paragraph (c)(3) to read as follows:

§ 176.25-25 Fire extinguishing equipment.

(c) In addition to the other requirements of this section, §§ 147.60 and 147.65 of this chapter requires that—

(3) * * *

Note: Section 147.65 of this chapter includes a requirement that the cylinder must

be retested and re-marked under the following conditions:

PART 181—FIRE PROTECTION EQUIPMENT

31. The authority citation for Part 181 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

32. In § 181.20-30, by revising paragraph (c) to read as follows:

§ 181.20-30 Cylinders.

(c) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

PART 189—INSPECTION AND CERTIFICATION

33. The authority citation for Part 189 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

34. In § 189.25-20, by revising footnote 1 to Table 189.25-20(a)(1) and footnote 1 to Table 189.25-20(a)(2) and removing the Note after footnote 1 to Table 189.25-20(a)(2) as follows:

§ 189.25-20 Fire extinguishing equipment.

(a) * * *

(1) * * *

TABLE 189.25-20(a)(1)

* * * * *
Cylinders must be tested and marked and all flexible connections and discharge hoses of semiportable carbon dioxide and halon extinguishers must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

(2) * * *

TABLE 189.25-20(a)(2)

* * * * *
Cylinders must be tested and marked and all flexible connections on fixed carbon dioxide and halon systems must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

PART 193—FIRE PROTECTION EQUIPMENT

35. The authority citation for Part 193 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

36. In § 193.15-20, by revising paragraph (i) to read as follows:

§ 193.15-20 Carbon dioxide storage.

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

Dated: March 7, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88-5283 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 81-893; FCC 88-3]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services; Second Computer Inquiry

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action determines the regulatory classification of the Bell Operating Companies embedded customer premises equipment (CPE) remaining under regulated and tariffed service. Embedded digital network channel terminating equipment (NCTE) is detariffed, while other types of embedded CPE owned by the BOC's remains under tariffed service. The BOCs are required to follow the detariffing procedures for digital NCTE set forth in the *AT&T CPE Detariffing Order* (48 FR 57168, Dec. 28, 1983) as modified in the *Fourth Notice* (50 FR 43735, Oct. 29, 1985) and in this Order.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Eighth Report and Order in CC Docket 81-893 adopted January 6, 1988 and released January 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. In the *Fourth Notice*, in this proceeding, the Commission sought to address the regulatory treatment of the narrow classes of embedded CPE that remained with the BOCs at divestiture. The Commission was persuaded by the record in this proceeding, consistent with the earlier recommendation of AT&T and the decision of the Divestiture Court in approving the Plan of Reorganization for AT&T, that the majority of this CPE should remain with the BOCs. In response to the *Fourth Notice* in this proceeding, the BOCs identified a multitude of problems regarding detariffing of this embedded CPE. These problems derive from the fact that the equipment is now largely obsolete, of minimal value, no competitive market exists for this CPE, and it is difficult and expensive to transfer to the customer. Thus, the Commission was persuaded that the interests of the users of this equipment would be better protected if it remained subject to regulation. Accordingly, in this Order, the Commission concluded that embedded CPE owned by the BOCs, except digital NCTE CPE, should remain in the regulated equipment category and may be tariffed in the appropriate jurisdiction. The Commission concluded that many of the problems identified with respect to detariffing the CPE it proposed to detariff in the *Fourth Notice* do not exist with respect to embedded digital NCTE. Because these factors do not apply, and a competitive market does exist that can provide choice to customers, the Commission concluded that embedded digital NCTE CPE should be deregulated and must be detariffed.

2. Thus, the Commission concluded that the final treatment of the subject BOC embedded CPE generally includes: (1) Permitting relevant state commissions to decide the appropriate treatment of CPE located at Public Service Answering Points used in connection with 911 emergency service; (2) continuing the current treatment, i.e., retaining pay telephone, official services equipment, extensions to pay telephone, 101 electronic switching system (ESS) switches, identifiers, Centrex CPE and other remaining embedded BOC CPE in the regulated equipment category; and (3) requiring the BOCs to detariff embedded digital NCTE.

3. The Commission requires the BOCs to follow the detariffing procedures set forth in the *AT&T CPE Detariffing Order* as modified in the *Fourth Notice* and this Order for detariffing digital NCTE. In the *Fourth Notice*, the Commission proposed to require the BOCs to follow

generally the procedures described in the *AT&T CPE Detariffing Order* for the deregulation of multi-line CPE owned by AT&T with some modifications. The Commission proposed to require the BOCs to offer embedded CPE for sale to subscribers during a two-year transition period after detariffing. The detariffing process described in the *Fourth Notice* provided for detariffing on a national basis since there are few BOCs, their operations are familiar and they tend to own standard types of equipment which were acquired when they were part of the Bell System. Although we proposed in the *Fourth Notice* to retain the bulk of the detariffing procedures of the *AT&T CPE Detariffing Order*, we presented modifications to those procedures that would require the BOCs to: (1) Offer the embedded CPE for sale at prices that do not exceed net book value plus reasonable transaction costs in the aggregate for each category of equipment; (2) maintain fixed sale prices throughout the transition period; (3) adjust month-to-month lease rates, if applicable, only at eight-month intervals to reflect increases in the Consumer Price Index (CPI). The Commission also proposed to incorporate additional requirements specified in the *AT&T CPE Detariffing Order*. Those requirements included: (1) A 90 day warranty for the equipment sold to customers; (2) a one year notification to the customer prior to a CPE phase-out; (3) the use of net book value in the aggregate by type of CPE as the valuation standard for transfer of the embedded CPE to the unregulated category; (4) nationwide lease rates set at 70% of the highest state tariff in a category of equipment, or the statistical median of such state tariffs; (5) filing a monthly report of number of sales, net book value and revenues with this Commission, during the price predictability period; (6) providing a detailed statement of the items included in transaction costs to this Commission; and (7) establishing a regional sales program.

4. In the *Fourth Notice*, the Commission also proposed to require the BOCs to follow the procedures in the *AT&T CPE Detariffing Order* that pertain to restrictions on the transfer and reformatting of customer proprietary information, the continuation of maintenance and support of the embedded CPE during the transition period, and the transfer to CPE subsidiaries of deferred tax reserve accounts and investment tax credits. Moreover, the Commission observed that in addition to the CPE to be transferred, the BOCs may have supporting assets that must also be

transferred to unregulated accounts. The Commission proposed to require the BOCs to follow the procedures outlined in our *AT&T CPE Detariffing Order* with respect to these assets. Specifically, the Commission proposed to require the BOCs to transfer land and buildings to their CPE subsidiaries at appraised value. All other supporting assets, however, would be transferred at new book value. Under the proposals of the *Fourth Notice*, the BOCs would also be required to follow the accounting requirements of the *AT&T CPE Detariffing Order*, as well as subsequent accounting orders in the sale of embedded CPE and the transfer of unsold CPE. The BOCs must either include the same items in transactions costs as we required for AT&T in the *CPE Detariffing* or provide a detailed statement of the items to be included in transaction costs for review within 90 days of the release of this Order. The benefit of this requirement is that a consistent set of items will define transactions costs during the sales program.

5. The Order requires that the BOCs file a quarterly report with this Commission during the price predictability period from July 1, 1988 through June 30, 1990. The quarterly report must indicate total net book value, sales revenues and transactions cost of sales in the aggregate of embedded digital NCTE, and must also indicate the percentage of equipment sold. Moreover, because of the small amount of equipment involved, the Commission does not require the BOCs to establish regional sales programs. The Order does require that each customer receive notification of the opportunity to purchase its embedded NCTE by July 1, 1988. Moreover, the Order requires that customers be notified of sales prices and transactions costs within 30 days of a request by a customer to a BOC.

6. The price predictability period shall begin July 1, 1988 and shall end June 30, 1990. The BOCs should continue to use existing lease rates in the customer's state as the basis for monthly lease rates. The use of existing rates with increases no greater than the increases in the CPI, in eight month intervals that begin with the first increase no sooner than eight months after detariffing, will provide customers with time to determine whether to continue to lease or purchase the CPE without price pressures.

7. In the *Third Order* in CC Docket 81-893 (49 FR 43667, Oct. 31, 1984), the Commission provided a framework for states to detariff embedded CPE owned

by Independent Telephone Companies (ITCs). In this Order, the Commission determined that certain types of CPE owned by the BOCs should remain under tariff. Since ITC's may own the same types of embedded CPE and central office equipment, we conclude that states may allow such CPE owned by the ITCs to remain under tariff. Those states that have already complied with the requirements of the *Third Order* may revise their plans for detariffing, if desired. Such states need not file their plan revisions with this Commission. Those states required to follow the Commission plan must treat the subject embedded CPE owned by ITCs in the same manner as the BOC embedded CPE has been treated in this Order.

8. In the *Fourth Notice*, the Commission postponed a decision on Southwestern's two petitions seeking permission to detariff and transfer Automatic Call Distribution (ACD) equipment to its CPE subsidiary, Southwestern Bell Telecommunications, Inc. By letter dated September 20, 1984, to William C. Sullivan, Southwestern, the Chief, Common Carrier Bureau, requested more specific information regarding the CPE involved. In its response, Southwestern agreed to charge customers lease rates equal to tariffed leased rates for two years after the transfer, but did not commit to offering the equipment for sale. The Commission views the sale requirement as essential to the satisfaction of the equitable principles of the *Democratic Central Committee*. The Order requires that all ACD equipment owned by the BOCs remain under tariff as required herein. Therefore, the petitions are dismissed.

9. It is ordered that, pursuant to sections 1, 4(i), 4(j), and 201-205, 213, 218, 220 and 403 of the Communications Act of 1934, 47 U.S.C. sections 151, 154(i), 154(j), 201-205, 213, 218, 220 and 403, the policies, rules, and requirements set forth in this Order are adopted.

10. It is further ordered, that the motion to defer or consolidate proceeding filed by Bell Atlantic is denied.

11. It is further ordered, that the petitions filed by Southwestern Bell Telephone Company to detariff and transfer ACD equipment to Southwestern Telecommunications, Inc. are denied.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-4817 Filed 3-9-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-14; RM-4601, RM-4720, RM-4826, RM-5180, RM-5181, & RM-5182]

Radio Broadcasting Services;
Cookeville, Donelson, Livingston,
Lebanon, Celina, South Pittsburg,
Goodlettsville and Smyrna, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments and denies petitions for reconsideration filed by William O. Barry and Bart Walker directed against actions in the *Report and Order* in this proceeding. William O. Barry asserts that the *Report and Order* failed to consider his proposal for Channel 234A at Lebanon, Tennessee and did not allot available Channel 294A to Donelson, Tennessee. This document states that it was not necessary to consider a proposal for Channel 234A at Lebanon because no party expressed an interest in applying for this allotment. In addition, failure to allot Channel 294A to Donelson was not error because this proposal was not advanced in any timely comments in this proceeding. In response to a separate petition, it is now appropriate to consider this Donelson proposal in a separate proceeding.

Bart Walker argues that the proposal for Channel 231A at Woodbury, Tennessee should not have been dismissed for lack of expression of interest in applying for this allotment because he expressed such an interest, albeit untimely, in reply comments. This document states that a defective proposal is not cured by a subsequent untimely expression of interest. However, an alternate channel (285A) proposal for Woodbury, with a site restriction, will now be considered in a separate proceeding.

This document also grants a petition for reconsideration by Smyrna Broadcasting Corporation to the extent of allotting Channel 231A to Smyrna, Tennessee, as its first FM Channel.

DATES: Effective April 11, 1988. The window period for filing will open on April 12, 1988, and close on May 12, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 84-14, adopted January 27, 1988, and released February 24, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PARTS 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b) the Table of FM Allotments, is amended under Tennessee, by adding Smyrna, Channel 231A.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-4816 Filed 3-9-88; 8:45 am]

BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Parts 810, 836 and 852

Acquisition Regulations; Specifications

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the VA Acquisition Regulations (VAAR) to provide agency guidance on the use of specifications, standards, and other purchase descriptions in the acquisition process. The regulation is being published as a final rule in order to supplement Federal Acquisition Regulations (FAR) 10.004(b) (2) and (3) to provide required detailed agency procedures, guidance and necessary clauses for VA contracting officers' use.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT:

Marsha J. Grogan, Policy and Interagency Service (91A), Office of Procurement and Supply, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3784.

SUPPLEMENTARY INFORMATION: On January 5, 1987, there was published on

page 280 of the **Federal Register** a notice of interim final rulemaking. After the interim rule was issued, five additional internal changes were made to provide guidance to contracting officers in the use of descriptive literature, bid samples, contract architect-engineer specifications, the brand name or equal clause, and the restriction on submission and use of equal products clause.

Section 810.004-70(b) was revised to require contracting officers, when issuing solicitations that include "brand name or equal" purchase descriptions, to include the FAR provision at 52.214-21, Descriptive Literature, and to review the requirements of FAR 14.202-5(d) when utilizing the descriptive literature provision.

Section 810.004-70(e) was revised to inform contracting officers, when requiring bid samples, to include the provision set forth at FAR 52.214-20, Bid Samples.

In § 836.202, paragraph (c) was renumbered and a new paragraph (b) was added to prohibit the use of "brand name or equal" or other restrictive specifications by contract architect-engineers without the prior written approval of the contracting officer during the design stage. Contracting officers were also notified to inform prospective architect-engineers of this requirement prior to award of a contract for design.

The prescription of the "Brand Name or Equal" clause found at 852.210-77 was revised to change an obsolete citation.

I. Background

When the FAR was issued, it contained a new Part 10 dedicated to the use of specifications. Part 10 does not, however, provide guidance in the use of "brand name or equal" purchase descriptions and other restrictive specifications. On January 5, 1987, the VA published a VAAR interim final rule to supplement the FAR coverage by providing guidance to VA contracting officers.

One comment was received from the Office of Federal Procurement Policy, Office of Management and Budget. They noted the published VAAR change, recognized the relevance to all Federal agencies, and recommended that VA pursue a FAR revision. VA was advised by the Civilian Agency Acquisition Council to publish a final rule while FAR coverage is being developed.

II. Executive Order 12291

Pursuant to the memorandum from the

Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from section 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the Competition in Contracting Act (CICA) as required by the FAR. The provisions are primarily internal procedures which will not impact the private sector.

IV. Paperwork Reduction Act

This final rule requires no additional information collection or recordkeeping requirement upon the public.

List of Subjects in 48 CFR Parts 810, 836 and 852

Government procurement.

Approved: March 1, 1988.

Thomas K. Turnage,

Administrator.

In 48 CFR Chapter 8, Parts 810, 836 and 852 are amended as follows:

1. The authority citation for Parts 810, 836 and 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. In section 810.004-70, paragraphs (b) and (e) are revised to read as follows:

810.004-70 Sealed bidding.

(b) Solicitations using "brand name or equal" purchase descriptions will contain the "brand name or equal" provision in 852.210-77, and the provision set forth at FAR 52.214-21, Descriptive Literature. Contracting officers are cautioned to review the requirements at FAR 14.202-5(d) when utilizing the descriptive literature provision.

(e) When a solicitation contains "brand name or equal" purchase descriptions, bidders who offer brand name products, including component parts, referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products. However, solicitations may require the submission of bid samples in

the case of bidders offering "or equal" products. If bid samples are required, the solicitation shall include the provision set forth at FAR 52.214-20, Bid Samples. The bidder must still furnish all descriptive literature in accordance with and for the purpose set forth in the "Brand Name or Equal" clause, 852.210-77(c)(1) and (2), even though bid samples may not be required.

3. In section 836.202, paragraph (b) is redesignated paragraph (c), a new paragraph (b) is added, and the first sentence in newly redesignated paragraph (c) is revised, to read as follows:

836.202 Specifications.

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer shall inform prospective architect-engineers of this requirement during the negotiation phase, prior to award of a contract for design.

(c) If it is determined that only one product will meet the Government's minimum needs and the VA will not allow the submission of "equal" products, the bidders must be placed on notice that the "brand name or equal" provisions of the "Material and Workmanship" clause found at FAR 52.236.5 and any other provision which may authorize the submission of an "equal" product, will not apply. * * *

852.210-77 [Amended]

4. In 852.210-77, in the introductory paragraph, remove "810.005" and add, in its place, "810.004."

852.236-90 [Amended]

5.a. In 852.236-90, in the introductory paragraph remove "836.202(b)" and add, in its place, "836.202(c)".

b. In the clause in 852.236-90 titled Restriction on Submission and Use of Equal Products [November 1986], an introductory paragraph is added immediately below the heading to the clause to read as follows:

852.236-90 Restriction on submission and use of equal products.

This clause applies to the following items:

[FR Doc. 88-5276 Filed 3-9-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 71267-8024]

Foreign Fishing; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendments 16 and 11a to the Fishery Management Plans for Groundfish of the Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs), respectively. These amendments accomplish the following: (1) Catcher/processor and mothership processor vessels operating in the Gulf of Alaska and Bering Sea and Aleutian Islands area are required to maintain onboard a transfer log and to report information weekly about transfers of groundfish products; (2) prohibited species in the Gulf of Alaska domestic and foreign fisheries are redefined, and three other categories of species are respecified; (3) the reserve category for some species of groundfish in the Gulf of Alaska is removed; (4) the term "target quotas" is changed to "total allowable catches" for groundfish in the Gulf of Alaska; (5) the starting date for the public comment period for proposed annual specifications is changed; (6) the Gulf of Alaska groundfish FMP is reorganized and edited; and (7) a section on vessel safety is added to the Gulf of Alaska FMP.

Items 1 through 5, above, are implemented by regulations, which are contained in the attached final rulemaking. Items 6 and 7, above, are not implemented by regulations. An additional regulatory change, not part of the amendment, expressly authorizes inseason reapportionments of domestic annual processing (DAP) groundfish amounts to joint venture processing (JVP) in the Gulf of Alaska. These regulations are intended to promote full accounting of groundfish catches in both management areas and to make clear the species in the Gulf of Alaska that are considered to be prohibited species. The reasons for these changes are given in the preamble for the proposed rule. They are necessary to adjust to the changing nature of the Alaska groundfish fisheries that are being increasingly dominated by U.S. fishermen. This action provides

conservation and management measures to further the goals and objectives of the FMPs.

EFFECTIVE DATE: April 7, 1988.

ADDRESS: Copies of the amendments, environmental assessment (EA), and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained by contracting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-271-2809.

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

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the exclusive economic zones (EEZ) of the Gulf of Alaska and the Bering Sea and Aleutian Islands area are managed in accordance with the FMPs, which were developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented by regulations appearing at 50 CFR 611.92 and 611.93 and Parts 672 and 675.

The Council approved for submission to the Secretary of Commerce (Secretary) the parts of Amendment 16 to the FMP for Groundfish of the Gulf of Alaska that are listed in the above summary. The Council adopted the same changes to reporting requirements as Amendment 11a to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

The Secretary received these amendments on November 18, 1987, for review. The Magnuson Act requires the Secretary, or his designee, to approve, disapprove, or partially disapprove FMPs and FMP amendments before the close of the 95th day following receipt. Following receipt of Amendments 16 and 11a, the Director of NMFS, Alaska Region (Regional Director), immediately commenced a review of the amendments to determine whether they were consistent with the provisions of the Magnuson Act and any other applicable law. A Notice of Availability of the amendments was published in the Federal Register on November 25, 1987 (52 FR 45215). A proposed rule was filed with the Office of the Federal Register on December 16, 1987 and published on December 21, 1987 (52 FR 48303). The Notice of Availability invited review and comment on the amendments until January 16, 1988. The proposed rule invited public review and comment on the regulations until January 30, 1988. This final rule implementing Amendments 16 and 11a takes comments received into account.

Comments received are summarized and responded to below.

The preamble to the proposed rule described and presented the reasons for each part of the amendments. The Secretary has reviewed each part of the proposed rule and the reasons for it. During this review, the Secretary has considered comments received from the public, fishing associations, and interested agencies. He has determined that each part of the amendment is consistent with the Magnuson Act and other applicable law. He has therefore approved each of the proposals as authorized by section 304 of the Magnuson Act within the time it requires. The following is a summary from the proposed rule of what each part requires or accomplishes:

1. New Reporting Requirements for Catcher/Processor and Mothership Processor Vessels

A. Maintain Onboard a Cargo Transfer/Off Loading Log

Operators of catcher/processor and mothership processor vessels, i.e., those vessels which process groundfish catch onboard as specified under § 672.2, will be required to maintain onboard their vessels a Cargo Transfer/Offloading Log. For each transfer of offloading of any fishery product from a regulated vessel in the EEZ, outside the EEZ, within any States' territorial waters, or within the internal waters of any State, this log will contain the following information: (a) The time, date, and location of the transfer or offloading; (b) the product weight and product type, by species or species group; (c) the name and permit number of the vessel receiving the product or, if to a shoreside location, the name of the location and commercial facility receiving the product; and (d) the intended port or destination of the receiving vessel in transferred to another vessel.

B. Submit Reports of Transferred Product Weight

Operators of catcher/processor and mothership processor vessels will be required to submit a Product Transfer Report. This report will be required for each Sunday through Saturday period, including even a zero report if no transfer is made. If a transfer is made, the report must include the product weight and the number of cartons transferred or offloaded, by product type, by species or species group.

C. Changes to the Currently Required Weekly Catch/Receipt Report

The currently required weekly catch report by catcher/processor and mothership processor vessels is renamed "Weekly Catch/Receipt and Production Report." In addition to other currently required information, information on the number of cartons and unit net weight of a carton of processed fish by species or species group is required.

2. Definition of Prohibited Species—FMP for Groundfish of the Gulf of Alaska

Four categories of species or species groups in the Gulf of Alaska are subject to management under the FMP. One of these is prohibited species. The category prohibited species includes: Any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab (*Paralithodes* spp.), and Tanner crab (*Chionoecetes* spp.).

The other three categories are: Target species, other species, and non-specified species. The category, target species, includes pollock, Pacific cod, flounders, rockfish, and sablefish. The category, other species, includes Atka mackerel, squid, sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The category, non-specified species, are those taken incidentally in the groundfish fisheries but are not managed by the FMP. Catch records for non-specified species need not be kept.

3. Other FMP Amendments Which Require Regulatory Changes.

Regulatory changes are made to paragraphs (c) and (f) in § 672.20 to implement FMP changes in sections 4.2.1.1 and 4.2.3.1. These changes will require public comments to be invited on proposed annual specifications and prohibited species catch limits for 30 days following the date of filing of the notice for public inspection with the Office of the Federal Register. The Secretary has determined that this is a technical change to current regulations and finds that no further analysis under other Federal law is required.

4. Regulatory Changes in Addition to Those Implementing FMP Amendments

A regulatory change is made to § 672.20(d)(2) that explicitly authorizes reapportionments of surplus DAP to JVP. The Secretary has determined that this is a technical change to current regulations and finds that no further

analysis under other Federal law is required.

Changes From the Proposed Rule in the Final Rule

In responses to Comment 6 (see Public Comments Received), § 672.20(c)(1) is reworded to make clear the priority of DAP over JVP in the allocation process.

Amendatory language in Items 5 and 7 for §§ 672.5 and 675.5 in the proposed rule inadvertently gave the impression that the Council intended to eliminate the current paragraphs (a)(3)(iv)(E) from each section. The FMP amendment package made available to the public by notice of availability on November 25, 1987 (52 FR 45215) clearly states that the Council intended to retain the requirement currently listed in § 672.5(a)(3)(iv)(E) and § 675.5(a)(3)(iv)(E). Therefore, in the final rule, current paragraphs (a)(3)(iv)(E) and (F) are redesignated as (F) and (G), respectively, the new paragraph (E) from the proposed rule is retained in the final rule, and the new paragraph (G) in the proposed rule is renamed paragraph (H) in the final rule.

Public Comments Received

Letters of comments were received from certain Federal agencies and from representatives of fishing associations. These comments are summarized and responded to below.

Comment 1: The new reporting requirements of catcher/processor and mothership processor vessels do not provide sufficient information that is needed to address identified fishery management problems and, therefore, the requirements will not accomplish the FMPs' conservation goals and will create enforcement inefficiencies. Therefore, National Standards 1 and 7 are violated.

Response: National Standard 1 requires that conservation and management measures shall prevent overfishing. "Overfishing" is a complex term, but NOAA has defined it as that level of fishing mortality that jeopardizes the capacity of a stock or stocks to recover to a level at which it can produce maximum biological yield or economic value on a long term basis. The new requirements for a transfer/offloading log and weekly reports of transfers and offloads will allow fisheries enforcement officials to quickly compare catch and offload information with the amount of groundfish product actually observed onboard the vessel. Thus, the new reporting requirements will provide a check against gross underlogging or misspecifying of products transferred at sea, which

otherwise might never be accounted for should they not go through a U.S. port where they could be subject to on-site inspections to determine compliance with the requirement to submit fish ticket reports. NMFS will use the new reporting requirements to better account for total fishing mortality, leading to a better understanding of the size and well-being of groundfish stocks, and the effectiveness of measures to conserve them. Thus, the new reporting requirements are entirely consistent with National Standard 1.

National Standard 7 requires that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. Since NMFS will provide reproducible forms for the Cargo Transfer/Offloading Log and the Product Transfer Log to vessel operators, standardization of recordkeeping by the operators will be fostered. Thus, inspection officers will be able to conduct inspections more efficiently and more easily identify instances of gross underlogging, which is entirely consistent with National Standard 7.

Comment 2: Up-to-date entries in the logs at least every 24 hours should be required in the regulations and in the FMPs.

Response: The Secretary has determined that the twelve hours already provided for updating entries is sufficient time and does not constitute a burden on vessel operators.

Comment 3: The information contained in the Product Transfer Report is of little use, because it adds nothing that is not already contained in fish tickets and the new Cargo Transfer/Offloading Log and in the production part of the new Weekly Catch/Receipt and Production Report.

Response: The Product Transfer Report is necessary for operators of catcher/processor and mothership processor vessels to commit to writing and report the amount of product transferred during the week. Otherwise, operators of such vessels could transfer large quantities of groundfish products at sea and then change any entries previously made in the Cargo Transfer/Offloading Log to reflect lower than actual amounts transferred. NMFS will use the Product Transfer Report as a check against products transferred but not logged. This would be evidence of any underlogging. Such information cannot be obtained from fish tickets, which are only required when catcher/processor and mothership processor vessels return to port, and cannot be used to document product transfers made covertly at sea. Evidence of underlogging cannot be obtained from

the weekly production report, since that document yields only numbers of cartons and representative weights of product that NMFS will use to compile a database to determine conversion rates and variability thereof.

Comment 4: The need to submit a fish ticket is questionable when the weekly production report and the transfer log system are used.

Response: The weekly production report and transfer log system serve different purposes from those of the fish ticket. Any discrepancies are rectified. The Weekly Catch/Receipt and Production Report is intended as a hail weight report for purposes of inseason management by NMFS. Weekly production information from the Weekly Catch/Receipt and Production Report is intended only to provide NMFS information on numbers of cartons of production and representative weights of a carton. NMFS will use this information to compile a database for determining conversion rates and variability thereof. It has nothing to do with information from fish tickets. The transfer log system, i.e., the Cargo Transfer/Offloading Log is intended to document amounts of product transferred at sea. Thus, it has a different purpose from that of a fish ticket.

The fish ticket, on the other hand, represents an edited catch report. It is edited by the Alaska Department of Fish and Game (ADF&G) when it is received. ADF&G checks the accuracy of the information submitted, including the amount of the catch, the species caught, and the statistical area where the catch came from. It contains certain information that is in addition to the Weekly Catch/Receipt and Production Report. Because it is checked, it serves as the confirmation report and supersedes the hail weight information submitted earlier in the Weekly Catch/Receipt and Production Report. Fish tickets from catcher/processors commonly are received too late for inseason management purposes.

Comment 5: Inviting comments on a proposed notice of preliminary specifications and apportionments for 30 days from date of filing, instead of date of publication, with the Office of the Federal Register would reduce the public's opportunity to perform any meaningful analysis of the notice material, and, therefore, the regulation should not be changed.

Response: As a practical matter, the interested public receives information on preliminary specifications and apportionments through the Council process, either during the meeting when recommendations are made, or from

Council mailings. Because the amount of time between the December Council meetings and the first day of a new fishing year is so short, the Secretary finds that concluding the review process within a shorter time but still within standards set forth by the Administrative Procedure Act is in the public interest.

Comment 6: Regulatory text at § 672.20(c)(1), which sets a new year's DAP and JVP as the amounts harvested during the previous year plus amounts the Secretary determines will be harvested by the U.S. industry, gives the impression that the JVP specifications will actually be set without regard to DAP specifications. This section should be revised to accurately detail the workings of the domestic processor preference.

Response: The Secretary assures the respondent that domestic processor preference will continue to be upheld during the allocation process. The existing regulation has been reworded accordingly.

Classification

The Regional Director determined that the FMP amendments are necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands and that they are consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator, Fisheries, found that no significant impact on the environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above and comments on it are requested.

The Assistant Secretary, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared by the Council. A copy of the RIR/FRFA may be obtained from the Council at the address above.

The RIR/FRFA also describes the effects this rule will have on small entities. The analysis contained in the RIR/FRFA is substantially the same as that contained in the RIR/IRFA. A copy of the FRFA may be obtained from the Council at the address above. The Assistant Secretary, NOAA, determined the action could have a significant economic impact on a substantial number of small entities.

This rule contains a collection-of-information requirement subject to the

Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under Control Number 0648-0016.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State did not respond; therefore, consistency is automatically implied.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a

federalism assessment under Executive Order 12612.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: March 7, 1988.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Parts 611, 672, and 675 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.92, paragraph (b), paragraph (c)(1) heading, and (c)(1)(i) are revised to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

(b) *Categories of species.* Four categories of species are recognized for regulatory purposes and they are set forth in Table 1. The term "groundfish" means species in all categories except the "prohibited species" category.

TABLE 1.—CATEGORIES OF SPECIES INVOLVED IN THE GULF OF ALASKA GROUND FISH FISHERY

Target species ¹	"Other Species" ²	Prohibited species ³	Nonspecified ⁴
Pollock, Pacific cod, flounders, sablefish, rockfish, and thornyhead rockfish..	Sculpins, sharks, skates, eulachon, smelts, capelin, octopus, Atka mackerel, and squid..	Pacific herring (<i>Clupea harengus pallasii</i>); salmonids (<i>Salmonidae</i>); Pacific halibut (<i>Hippoglossus stenolepis</i>); king crab (<i>Paralithodes</i> spp. and <i>Lithodes</i> spp.); Tanner crab (<i>Chionoecetes</i> spp.)..	All species not included in these categories.

¹ Commercially important; specific TAC applies to each species or species group; records must be maintained.

² The target quota for these species as a category is set at five percent of the combined target quotas of the target species. Records of the catch or receipt of "other species" must be kept.

³ Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this Part. Records must be maintained as required by these §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained for any catches or receipts of these species, except for non-specified species.

⁴ The term "non-specified species" means for purposes of this section those species that are not listed in paragraphs (b)(1), (2), and (3) of this section and are not managed under authority of other fishery management plans or under authority of the International Pacific Halibut Commission. Catch records need not be kept.

(1) The term "target species" means, for purposes of this section, species that are commercially important and are generally targeted upon by the groundfish fishery. They include pollock, Pacific cod, flounders, sablefish, rockfish, and thornyhead rockfish. Records of the catch or receipt of each target species or species group must be kept.

(2) The term "other species" means, for purposes of this section, species that currently have only slight economic value and are not generally targeted upon, but which are significant components of the ecosystem or have economic potential. They include sculpins, sharks, skates, eulachon, smelts, capelin, octopus, Atka mackerel, and squid. The total allowable catch (TAC) for those species as a category is set at five percent of the combined quotas of the TACs of the target species. Records of the catch or receipt of "other species" must be kept.

(3) The term "prohibited species" means for purposes of this section; Pacific herring (*Clupea harengus pallasii*); salmonids (*Salmonidae*); Pacific halibut (*Hippoglossus stenolepis*); king crab (*Paralithodes* spp. and *Lithodes* spp.); Tanner crab (*Chionoecetes* spp.) Except

to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately in accordance with § 611.11 of this Part. Records must be maintained as required by §§ 611.9, 611.90(e)(2), and this section. Any species of fish for which there is no foreign allocation must be treated in the same manner as "prohibited species" and records must be maintained of any catches or receipts of these species, except for "non-specified species". Catches or receipts of "non-specified species" must be treated in the same manner as "prohibited species", but records are not required of catches or receipts of these species.

(4) The term "non-specified species" means, for purposes of this section, species that are not listed in paragraphs (b)(1), (2), and (3) of this section and are not managed under authority of other fishery management plans or under authority of the International Pacific Halibut Commission. Catch records need not be kept.

(c) (1) TAC's, TALFF's, Reserves, and PSC limits. (i) See 50 CFR Part 672, Subpart B, for procedures to determine

total allowable catches (TACs), domestic annual processing (DAP), joint venture processing (JVP), reserves, total allowable level of foreign fishing (TALFF), and prohibited species catch limits. Species listed in paragraph (b)(3) and Table 1 of this section as "prohibited species," species listed in paragraph (b)(4) of this section as "non-specified species," and species for which the TALFF is zero, including species for which a PSC limit has been specified, will be treated in the same manner as prohibited species under § 611.11.

PARTS 672 AND 675—[AMENDED]

3. The authority citation for 50 CFR Parts 672 and 675 continues to read as follows:

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

4. In § 672.3, paragraph (a) is revised to read as follows:

§ 672.3 Relation to other laws.

(a) *Federal law.* For regulations governing foreign fishing for groundfish in the Gulf of Alaska, see 50 CFR 611.92; for those governing foreign fishing for

groundfish in the Bering Sea and Aleutian Islands, see 50 CFR 611.93. For regulations governing fishing for groundfish in the Bering Sea and Aleutian Islands by vessels of the United States, see 50 CFR 675; for those governing salmon fishing off Alaska, see 50 CFR Part 674; for those governing permits and certificates of inclusion for the taking of marine mammals, see 50 CFR 216.24. For regulations governing fishing for Pacific halibut by vessels of the United States, see the regulations of the International Pacific Halibut Commission at 50 CFR Part 301.

5. In § 672.5, paragraph (a)(3)(iv) introductory text is revised, paragraphs (a)(3)(iv)(E) and (F) are redesignated as (F) and (G), respectively, and new paragraphs (a)(3)(iv)(E), (a)(3)(iv)(H), and (a)(3)(v) are added to read as follows:

§ 672.5 Reporting requirements.

(a) * * *

(3) * * *

(iv) *Catch/receipt and product transfer report.* After notification of starting fishing by a vessel under paragraph (a)(3)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been offloaded, the operator of that vessel must submit a weekly catch/receipt and product transfer report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. The catch/receipt and

product transfer report must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. This report must contain the following information:

* * *

(E) The number of cartons of fish product, and the estimated unit net weight, in kilograms or pounds, of the carton of processed fish by species or species group produced by that vessel during the reporting period;

* * *

(H) The product weight, rounded to the nearest one-tenth of a metric ton (0.1 mt) and the number of cartons transferred or offloaded by product type and by species or species group.

(v) *Cargo transfer/offloading log.* For each transfer or offloading of fish product in the EEX, outside the EEZ, within any State's territorial waters, or within the internal waters of any State, the operator of each regulated fishing vessel must record, in a separate transfer log, the following information within twelve hours of the completion of the transfer or offloading:

(A) The time and date (GMT) and location (in geographic coordinates or if within a port, the name of the port) the transfer or offloading began and was completed;

(B) The product weight and product type, by species or species group of all fish products transferred or offloaded to

the nearest one-tenth of a metric ton (0.1 mt);

(C) The name and permit number of the vessel receiving the product or, if offloaded to a shoreside location, the name of the location and commercial facility receiving the product; and

(D) The intended port or destination of the receiving vessel if transferred to another vessel.

* * *

6. In § 672.20, paragraph (a)(2)(i) is redesignated as (a)(2)(ii), paragraph (a)(2) introductory text is revised, a new paragraph (a)(2)(i) is added, and paragraphs (c)(1), (d)(2) and (d)(5)(i), (e)(1), and the third sentence of (f)(2)(i) are revised to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) Total Allowable Catch (TAC). The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will specify the annual TAC for each calendar year for each target species and the "other species" category, and will apportion the TACs among DAP, JVP, reserves, and total allowable level of foreign fishing (TALFF).

(i) The sum of the TACs specified must be within the OY range of 116,000 to 800,000 mt for target species and the "other species" category. Initial reserves are established for pollock, Pacific cod, flounder, and "other species" which are equal to twenty percent of the TACs for these species or species groups.

TABLE 1.—INITIAL (AS OF JANUARY 1, EACH YEAR) TOTAL ALLOWABLE CATCH (TAC), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. TAC=DAH+RESERVE+TALFF; DAH=DAP+JVP.

Species	Area ¹	Code	TAC	DAH	DAP	JVP	Reserve	TALFF
Pollock	W/C	701						
	Outside Shelikof							
	E							
	(Total)							
Pacific cod	W	702						
	C							
	E							
	(Total)							
Flounders	W	129						
	C							
	E							
	(Total)							
Sablefish	W	703					NA ²	
	C							
	W, Yakutat							
	SE/Eastern Yakutat							
	(Total)							
Other Rockfish ³	W	849					NA ²	
	C							
	E							
	(Total)							
Shelf demersal Rockfish ⁴	SEO						NA ²	
Thornyheads	G-W	749					NA ²	
Other sp. ⁵	G-W							

¹ See Figure 1 of § 672.20 for description of regulatory area and districts. W=Western, C=Central, E=Eastern, G-W=Gulf-Wide, SE=Southeast.

² NA not applicable. Reserves are not established.

³ The category "other rockfish" includes all fish of the genus (*Sebastes*) except the category shelf demersal rockfish as defined in footnote 3 below and *Sebastes* (thornyhead rockfish).

⁴ Shelf demersal rockfish include *Sebastes paucispinis* (bocaccio), *S. nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. proriger* (redstripe rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. brevispinis* (silvergrey rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), *S. pinniger* (canary rockfish).

⁵ The category "other species" includes sculpins, sharks, skates, eulachon, smelts, octopus, Atka mackerel, and squid. The TAC is equal to 5 percent of the TACs of the target species.

(c) * * *

(1) *Notices of harvest limits and PSC limits.* As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying preliminary annual TAC, DAP, JVP, TALFF, reserves, and applicable PSC amounts for each target species, "other species" category, any species determined to be fully utilized by the DAP fisheries. The preliminary specifications of DAP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to U.S. processors. The preliminary specifications of JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S. fishing industry for delivery to foreign processors, subject to reductions to accommodate increasing DAP. These additional amounts will reflect as accurately as possible to projected increases in U.S. processing and harvesting capacity and the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal Register. The Secretary will consider timely comments and, after consultation with the Council, specify the final PSC limits and annual TAC for each target species, the "other species" category, and apportionments thereof among DAP, JVP, TALFF, and reserves. These final amounts will be published as a notice in the **Federal Register** on or about January 1 of each year. These amounts will replace the corresponding amounts for the previous year.

(d) * * *

(2) *Apportionment of surplus DAP to JVP and surplus DAP to TALFF.* In accordance with paragraph (d)(5) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary will apportion to JVP any part of the DAP amounts that he determines will not be processed by

U.S. processors, and may apportion to TALFF any part of the DAP amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

(5) * * *

(i) *General.* The Secretary, under paragraphs (d)(1) and (d)(2) of this section, may apportion to TALFF only those amounts that he determines will not be harvested by vessels of the United States during the remainder of the fishing year, and shall apportion to JVP only those amounts he determines will be harvested by vessels of the United States during the remainder of the fishing year but will not be processed by United States processors. The amount of reserve that the Regional Director determines will be harvested by vessels of the United States may, at the discretion of the Secretary, either be apportioned to DAP or JVP, or retained in the reserves as eligible for later apportionment under paragraph (d) of this section.

(e) * * *

(1) Prohibited species, for the purpose of this Part, are any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Salmo gairdneri*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasii*), king crab (*Paralithodes* spp., and *Lithodes* spp.) and Tanner crab (*Chionoecetes* spp.) caught by a vessel regulated under this Part while fishing for groundfish in the Gulf of Alaska, unless retention is authorized by other applicable law, including the regulations of the International Pacific Halibut Commission.

(f) * * *

(2) * * *

(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the proposed halibut PSC limits for JVP vessels and DAP vessels. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on the proposed halibut PSC limits will be accepted by the Secretary for 30 days after the notice is filed for public inspection with the Office of the Federal

Register. The Secretary will consider timely comments in determining, after consultation with the Council, the final halibut PSC limits for the next year. A notice of these final halibut PSC limits will be published in the **Federal Register** as soon as practicable after December 15 and will also be made available to the public by the Regional Director through other suitable means.

PART 675—[AMENDED]

7. In § 675.5, paragraph (a)(3)(iv) introductory text is revised, current paragraphs (a)(3)(iv) (E) and (F) are redesignated as (F) and (G), respectively, and new paragraphs (a)(3)(iv)(E), (a)(3)(iv)(H), and (a)(3)(v) are added to read as follows:

§ 675.5 Reporting requirements.

(a) * * *

(3) * * *

(iv) *Catch/receipt and product transfer report.* After notification of starting fishing by a vessel under paragraph (a)(3)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been offloaded, the operator of that vessel must submit a weekly catch/receipt and product transfer report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. The catch/receipt and product transfer report must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 675.4 of this Part. This report must contain the following information:

(E) The number of cartons of fish product, and the estimated unit net weight, in kilograms or pounds, of the carton of processed fish by species or species group produced by that vessel during the reporting period;

(H) The product weight, rounded to the nearest one-tenth of a metric ton (0.1 mt) and the number of cartons transferred or offloaded by product type and by species or species group.

(v) *Cargo transfer/offloading log.* For each transfer or offloading of fish product in the EEZ, outside the EEZ, within any State's territorial waters, or

within the internal waters of any State, the operator of each regulated fishing vessel must record, in a separate transfer log, the following information within twelve hours of the completion of the transfer or offloading:

(A) The time and date (GMT) and location (in geographic coordinates or if within a port, the name of the port) the transfer or offloading began and was completed;

(B) The product weight and product type, by species or species group, of all fish products transferred or offloaded to

the nearest one-tenth of a metric ton (0.1 mt);

(C) The name and permit number of the vessel receiving the product or, if to a shoreside location, the name of the location and commercial facility receiving the product; and

(D) The intended port of destination of the receiving vessel if transferred to another vessel.

**§§ 611.92, 672.20, 672.22, and 672.24
[Amended]**

8. In addition to the amendments set forth above, remove the initials "TQ"

and add, in their place, the initials "TAC" in the following places:

§ 611.92(c)(2)(ii)(A); Newly redesignated § 672.20(a)(2)(ii) introductory text and (ii) (A) and (B), (b)(1), and (c)(2) (i) and (ii) and (iii) (A) and (B);

§ 672.22(a)(1)(iii), (2)(i)(B) and (iii), and (3)(vi); § 672.24(b)(1), (2), and (3) (i) and (ii).

[FR Doc. 88-5298 Filed 3-8-88; 9:28 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 47

Thursday, March 10, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program: Continuation of Coverage During Military Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its Federal Employees Health Benefits (FEHB) Program regulations to permit an employee or annuitant who enters the military on active duty or active duty for training to continue his or her FEHB enrollment for up to 12 months. OPM is taking this action to make the FEHB Program consistent with the Federal Employees' Group Life Insurance (FELI) Program.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bob MacKinnon, (202) 632-4634.

SUPPLEMENTARY INFORMATION: A provision of Pub. L. 99-335, the Federal Employees Retirement System Act of 1986, amended the Federal Employees' Group Life Insurance (FELI) law to allow the FELI coverage of an employee who enters the military on active duty or active duty for training to continue for up to 12 months in the same way coverage is continued for employees in other types of nonpay status.

Most individuals who need to maintain life insurance coverage would also need to maintain health insurance coverage while on military leave. Therefore, we are changing the FEHB

Program to make it consistent with the FEGLI Program.

While the FEHB law permits an employee to continue his or her enrollment while in a leave-without-pay status not to exceed 1 year, it delegates the authority to OPM to prescribe regulations in this area. The current regulations require an agency to terminate the FEHB enrollment of an employee placed in leave without pay to enter the military on active duty or active duty for training in excess of 30 days. The regulations also apply to annuitants who enter active duty military service for more than 30 days. The enrollment is automatically reinstated on the day the employee is restored to a civilian position, or in the case of annuitants, on the date of separation from the military. This policy was established to protect the individual from the liability of health benefits premiums while health care is available from the military and FEHB coverage is not needed.

However, we have found that this policy may create a hardship for families when the self and family coverage of the employee or annuitant is terminated, and the individual's dependents do not accompany him or her to the military duty station. Under the existing policy, dependents of the employee or annuitants who enters on active duty in the military would be without FEHB coverage for the entire period of active duty military service. Even though the dependents would be eligible for benefits under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), they might not find it convenient from the standpoint of distance to use the CHAMPUS facilities or providers, or they might be reluctant to interrupt longstanding patient/provider relationships in their home locale. Therefore, in some circumstances, they would feel forced to pay out-of-pocket for their health care expenses due to their involuntary loss of FEHB coverage. Our proposed regulations would permit an employee to continue his or her FEHB coverage while in leave without pay for active duty military service for up to 12 months, unless he/she elects to have the enrollment terminated as of the day before entering active duty. Of course, those who continue enrollment would be responsible for paying the employee share of the premium, just like

any other employee in nonpay status. A similar choice would be permitted for an annuitant in the same situation, provided the annuity does not terminate. For an annuitant, however, a continued enrollment would not terminate after 12 months, if the annuity continues while he or she is on active duty.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,
Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.304, paragraphs (a)(5) and (b)(2)(iii) are amended by adding the text set forth below to the end of the respective paragraphs:

§ 890.304 Termination of enrollment.

(a) * * *

(5) * * *, provided the employee elects, in writing, to have the enrollment so terminated.

* * * * *

(b) * * *

(2) * * *

(iii) * * *, provided the annuitant elects, in writing, to terminate the enrollment.

* * * * *

[FR Doc. 88-5216 Filed 3-9-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-10-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require modification to the aft lavatories to reduce the risk of fire. This notice proposes to require installation of a shroud behind the towel and cup dispensers in the aft lavatories to prevent accumulation of combustible materials behind the aircraft sidewall. Accumulation of combustible materials in this inaccessible location constitutes a fire hazard.

DATES: Comments must be received no later than May 9, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information, when available, may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Airworthiness Rules Docket No. 88-NM-10-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On certain Boeing Model 737 aft lavatories, the towel and cup dispensers are open on the back side, which allows materials to fall behind the airplane sidewall. Further, when the dispenser is empty, there is direct access between the airplane cabin and the area behind the sidewall. Since any material which might accumulate behind the sidewall would be undetectable to a person in the cabin, a considerable amount of material could build up before it is noticed. In addition, materials in this location are not easily removable even if they are discovered. Since the dispenser is for the express purpose of storing paper products, it is reasonable to expect some of these paper products to fall behind the sidewall in the current installation. The area behind the sidewall contains wiring and electrical connections and, thus, the presence of combustibles constitutes a fire hazard.

Since this condition is likely to exist or develop in other airplanes of this model, the FAA is proposing an AD that would require installation of a shroud on the aft lavatory towel and cup dispenser to prevent the accumulation of flammable material behind the sidewall. (This directive would not apply to modular lavatories installed on certain Model 737 airplanes.) Boeing has made a design change to the production airplanes and is the process of developing a service bulletin with instructions to correct this problem. The FAA may consider referencing the service bulletin in the final rule as an approved method of compliance.

It is estimated that 550 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The cost of parts would not exceed \$100. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$231,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 30

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, equipped with non-modular aft lavatories, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent accumulation of combustible materials behind the airplane sidewall, accomplish the following:

A. Within 3 months after the effective date of this amendment, and thereafter at intervals not to exceed 3 months, until the requirements of paragraph B., below, are accomplished, inspect the area behind the towel and cup dispenser in the aft lavatories and remove all foreign material.

B. Within 15 months after the effective date of this amendment, install a shroud behind the towel and cup dispenser in the aft

lavatories, which encloses the dispenser back and prevents material from falling behind the sidewall, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on March 2, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-5205 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-08-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires visual inspection for cracking, and repair or replacement, as necessary, of the skin along the upper row of fasteners of certain fuselage lap joints. This action would require the accomplishment for certain eddy current inspections, which are currently optional procedures in the existing AD. This action is necessary to ensure that cracks in the skin are detected and repaired, in order to prevent rapid depressurization.

DATES: Comments must be received no later than May 10, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft

Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-08-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On October 2, 1987, FAA issued AD 87-21-08, Amendment 39-5752 (52 FR 38395; October 16, 1987), to require visual inspection for cracking, and repair or replacement, as necessary, of the skin along the upper row of fasteners of certain fuselage lap joints on Boeing Model 737 series airplanes. Failure to detect and repair cracks could lead to rapid depressurization.

AD 87-21-08 was issued without public notice, due to its emergency status. Accordingly, long term inspection requirements were not included in the AD since public notice must be provided for such action.

The FAA has determined that, in order to maintain an adequate level of safety, it is necessary now to revise the

existing AD to add a requirement for eddy current inspections to be accomplished prior to the accumulation of 30,000 landings, or within 10,000 landings after the effective date of AD 87-21-08, whichever occurs later, and repeated thereafter at certain intervals.

It is estimated that 165 airplanes of U.S. registry would be affected by this AD, that it would take approximately 188 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,240,800.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising AD 87-21-08, Amendment 39-5752 (52 FR 38395; October 16, 1987, paragraph B., to read as follows:

B. Prior to the accumulation of 30,000 landings, or within 10,000 landings after November 2, 1987, whichever occurs later, perform inspections for cracks and/or tearstrip delamination using one of the following three options in accordance with Boeing Alert Service Bulletin 737-53A1039, Revision 3, dated August 20, 1987, or later FAA-approved revisions. This constitutes terminating action for the repetitive inspections required by paragraph A., above.

1. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right side of the fuselage, from stations 360 to 1016. Repeat thereafter at intervals not to exceed 20,000 landings. If no cracks are found, prior to the accumulation of 6,000 landings after the completion of the above eddy current inspection, and thereafter at intervals not to exceed 3,000 landings until the next eddy current inspection, perform a detailed visual inspection of these same areas.

2. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right sides of the fuselage, from stations 360 to 1016. Repeat thereafter at intervals not to exceed 20,000 landings. In addition, perform a tearstrap inspection for delamination. If no cracks are found and tearstrap bond is intact, prior to the accumulation of 6,000 landings after the completion of the above inspections, and thereafter at intervals not to exceed 6,000 landings, perform a detailed visual inspection for skin cracks of the areas previously inspected by eddy current.

3. Perform a high frequency eddy current inspection of the skin adjacent to the upper row of longitudinal lap splice fasteners at stringer 4, both left and right side of fuselage, from stations 360 to 1016. In addition, perform a tearstrap inspection for delamination. Repeat the eddy current inspections at intervals not to exceed 10,000 landings, and the delamination inspections at intervals not to exceed 20,000 landings.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 3, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-5206 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Proposed Customs Regulations Amendment Designating Tamiami Airport, Miami, FL, for Private Aircraft Reporting

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

ACTION: Proposed rule.

SUMMARY: This document announces a proposal to amend the Customs Regulations by adding Tamiami Airport, Miami, Florida, to the list of designated airports at which private aircraft arriving in the U.S. from the southern portion of the Western Hemisphere via the U.S./Mexican border, or via the Atlantic, Pacific or Gulf of Mexico coasts, must land for Customs inspection. This proposal is made to help relieve congestion at the seven other designated airports in south Florida, a condition which makes it difficult to effectively conduct Customs private airport enforcement program. Public comments are invited on the proposal for consideration before a final decision is reached on this matter.

DATES: Comments must be received on or before May 9, 1988.

ADDRESSES: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, Room 2324, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Glenn Ross, Office of Inspection and Control (202-566-5707).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs efforts to combat the problem of drug smuggling by air, in 1975 the Customs Regulations were amended to add a new § 6.14 (19 CFR 6.14), that provides in part that private aircraft arriving in the U.S. via the U.S./Mexican border must provide a notice of intended arrival with Customs (T.D. 75-201; 40 FR 33203). The section further provides that these private aircraft must land at any one of the designated airports near the U.S./Mexican border. The purpose of this regulation was to provide Customs with increased enforcement efficiency by providing tight control over air traffic arriving from the direction of countries that are major sources of illegal drugs destined for the U.S.

In our diligence to fight the national epidemic of illegal drugs, Customs has amended § 6.14, Customs Regulations, several times since 1975. Amendments have included extending coverage to private aircraft arriving via the Pacific, Gulf of Mexico, or Atlantic coasts (T.D. 83-192; 48 FR 41381); expanding coverage by modifying the definition of private aircraft (T.D. 84-236; 49 FR 46885); extending the coverage to include some flights arriving from Puerto Rico and all flights arriving from the U.S.

Virgin Islands, increasing from 15 minutes to one hour the minimum time required for notice to be given prior to penetrating U.S. air space, and requiring aircraft seeking exemption from landing requirements to be equipped with functioning transponders (T.D. 86-72; 51 FR 11004); and removing San Diego International Airport (Lindbergh Field) from the list of designated airports in § 6.14 because Lindbergh Field's distance from the U.S./Mexican border was permitting smugglers to operate in the area (T.D. 86-146; 51 FR 27836).

Customs is now proposing to amend § 6.14(g), which lists designated airports at which subject aircraft must land for Customs inspection, by adding Tamiami Airport, Miami, Florida, to that list.

This proposal is in response to the congested conditions at the other seven airports in southern Florida which are already designated for private aircraft reporting. Those other airports are: Fort Lauderdale Executive Airport and Fort Lauderdale-Hollywood International Airport, in Fort Lauderdale; St. Lucie County Airport, in Fort Pierce; Key West International Airport, in Key West; Miami International Airport and Opa-Locka Airport, in Miami; and Palm Beach International Airport, in West Palm Beach. By increasing the number of airports available at which arriving private aircraft may report, the burden on existing airports should be reduced, and overall enforcement should be enhanced. The proposed designation is a continuation of Customs recent efforts to improve our private aircraft enforcement program.

Comments

Before making a determination on this matter, consideration will be given to any written comments timely submitted. Comments submitted 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. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2324, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291

Because this proposal relates to the organization of Customs it is not a regulation or rule subject to E.O. 12291.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act ("Act") relating to an initial and final regulatory

flexibility analysis (5 U.S.C. 603, 604), are not applicable to this proposal because it will not have a significant economic impact on a substantial number of small entities. Customs routinely makes adjustments to its field organization to accommodate the volume of Customs related activity throughout the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because adjusting the Customs field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the

reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 6

Customs duties and inspection.
Imports, Air carriers, Aircraft, Airports.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11); 1624; 49 U.S.C. 1474, 1509.

§ 6.14 [Amended]

2. It is proposed to amend § 6.14(g) by inserting, in appropriate alphabetical order, "Miami, Fl." in the column headed "Location", and on the same line, "Tamiami Airport" in the column headed "Name".

William Meglen,

Acting Commissioner of Customs.

Approved: March 1, 1988.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 88-5316 Filed 3-9-88; 8:45 am]

BILLING CODE 4820-02-M

Notices

Federal Register

Vol. 53, No. 47

Thursday, March 10, 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

[Docket No. 88-003N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on Tuesday and Wednesday, April 5 and 6, 1988, in Washington, DC, from 9:00 a.m. to 5:00 p.m., at the Holiday Inn, Columbia South, 550 C Street, SW., Washington, DC. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

The Agenda for this meeting follows:

- (1) Welcome and Introduction of Members
- (2) Historical Background of "An Evaluation of the Role of Microbiological Criteria for Foods"
- (3) Agency Prospectus for the Committee
- (4) Epidemiological Considerations
- (5) Refrigerated Ready-to-Eat Product (Pull By Dates)
- (6) Committee Operating Procedures
- (7) Working Group Assignments
- (8) Working Group Comments to the Full Committee
- (9) Future Activities

The members of the National Advisory Committee on Microbiological Criteria for Foods are:

Dr. Howard Bauman, Vice President, Science & Regulatory Affairs, Pillsbury Company, 311 Second Street, SE., Minneapolis, MN 55414

Dr. William L. Brown, President, ABC Research Corporation, 3437 24th Avenue, SW., Gainesville, FL 32607

Dr. Robert L. Buchanan, Agricultural Research Service, Eastern Regional Research Center, 600 E. Mermaid Lane, Philadelphia, PA 19118

Mr. Jerry Carosella, Deputy Director, Microbiology Division, Food Safety & Inspection Service, 14th & Independence Avenue, SW., Washington, DC 2050

Dr. Mitchell Cohen, Deputy Director, Division of Bacterial Diseases, Center for Infectious Diseases, 1600 Clifton Road, Atlanta, GA 30333

Dr. Don Corlett, Director, Microbiology and Information Resources, 205 N. Wiget Lane, Walnut Creek, CA 94598

Mr. Cleve Denny, Director, Research Services, National Food Processors Association, 1401 New York Avenue, NW., Washington, DC 20005

Dr. Michael Doyle, Associate Professor, Food Research Institute, University of Wisconsin, 1925 Willow Drive, Madison, WI 53706

Dr. Damien Gabis, President, Silliker Laboratories, Inc., 1304 Halsted Street, Chicago Heights, IL 60411

Mr. Spencer Garrett, Director, National Seafood Inspection Laboratory, National Marine Fisheries, 3209 Frederick, Pascagoula, MS 39568-1207

Dr. Phil Hudspeth, Vice President, Research and Quality Assurance, Holly Farms Poultry, 1203 School Street, Wilkesboro, NC 28697

Mr. Kenneth Iwamoto, Director, Research Development and Quality Assurance, FRIONOR—USA, New Bedford, MA 02741

Dr. James Jay, Professor, Department of Biological Sciences, Wayne State University, 328 Old Main, Detroit, MI 48201

Dr. John Kvenberg, Food and Drug Administration, 200 C Street, SW., Room 3832, HFF-232, Washington, DC 20204

Dr. Martha Rhodes, Assistant Commissioner, Florida Department of Agriculture and Consumer Services, The Capitol, Tallahassee, FL 32399-0810

Dr. Durwood B. Rowley, U.S. Army-Natick Research Development and Engineering Center, Attn: STRNC-YM, Kansas Street, Natick, MA 01760-5020

Dr. R. B. Sleeth, Vice President, Research and Technical Services, Armour Foods, 15101 North Scottsdale, Scottsdale, AZ 85254

Dr. Bruce Tompkin, Chief Microbiologist, Director of Basic

Science, Swift and Company, 1919 Swift Drive, Oak Brook, IL 60522

Dr. Michael Wehr, Administrator, Laboratory Services Division, Oregon Department of Agriculture, 635 Capitol, NE., Salem, OR 98310-0110

The Committee and working group meetings are open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175 South Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-3002.

Done at Washington, DC on: March 4, 1988.

Kenneth A. Gillies,
Chairman.

[FR Doc. 88-5252 Filed 3-9-88; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Appalachian Integrated Pest Management Gypsy Moth Demonstration Project; Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) on an Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project to manage gypsy moth populations. The project area will cover approximately 13 million acres in Virginia and West Virginia, including the George Washington, Jefferson, and Monongahela National Forests, and Shenandoah National Park, as well as State and private and other Federal lands. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal, so that interested and affected people are aware of how they may participate and contribute to the final decision.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis and requests to be included on the EIS mailing list to David P. Smith, Environmental Impact Team Leader, Southern Region, 1720 Peachtree Road NW., Atlanta, Georgia 30367, Phone (404) 347-4338.

FOR FURTHER INFORMATION CONTACT: Questions concerning the project on National Forest lands should be directed to: Forest Supervisor, George Washington National Forest, P.O. Box 233, Harrison Plaza, Harrisonburg, VA 22801, Phone (703) 433-2491; Forest Supervisor, Monongahela National Forest, USDA Building, Sycamore Street, Box 1548, Elkins, WV 26241-1548, Phone (304) 636-1800, and Forest Supervisor, Jefferson National Forest, 210 Franklin Road, SW., Roanoke, VA 24001, Phone (703) 982-6270. Questions concerning the project on the Shenandoah National Park should be directed to the Park Superintendent, Shenandoah National Park, Route 4, Box 292, Luray, VA 22835-9051, Phone (703) 999-2243.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement on an Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project to manage the gypsy moth. This 5 year Project will be designed to demonstrate the effectiveness of new and existing technology in an integrated pest management approach to minimize the natural spread and adverse effect of the gypsy moth.

The project area will cover approximately 13 million acres in Virginia and West Virginia, including the Monongahela, Jefferson, and George Washington National Forests, Shenandoah National Park, as well as State and private and other Federal lands. This demonstration project is in addition to normal County, State, or State/Forest Service suppression activities and normal State/APHIS eradication activities that may occur outside the AIPM Project boundary.

The EIS will include sufficient analysis to disclose the environmental effects of non-intervention and intervention activities used to manage gypsy moth populations. Gypsy Moth Suppression and Eradication Projects: Final Environmental Impact Statement as Supplemented—1985 and Final Addendum to the Final Environmental Impact Statement as Supplemented—1985, will be incorporated by reference

into this EIS. The effects of implementing all alternatives in environmentally sensitive areas such as designated wildernesses will be discussed.

Public involvement will be encouraged throughout the process. Interested groups, organizations, and individuals, as well as other Federal, State and local government agencies are invited to participate in determining the major issues and sub-issues addressed in the EIS. To accomplish this, the Forest Service will mail a scoping letter to the public explaining the proposed project and requesting identification of issues pertaining to the project that should be addressed in the EIS. Public participation is especially important during the scoping process. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives.
6. Determining potential cooperating agencies and task assignments.

A mailing list of individuals and organizations who have expressed past interest in management of the National Forests in or near the Project area will be used. In addition, the Forest Service will issue a press release providing additional information on the EIS and scoping for anyone not on the mailing lists used. Written requests to be included on the mailing list can be sent to David P. Smith, Environmental Impact Team Leader, at the address listed above.

A reasonable range of alternatives will be formulated by an interdisciplinary EIS team. One alternative will be a no action alternative. Other alternatives will be developed using public input from scoping and various combinations of all or part of the integrated pest management techniques used to manage the gypsy moth.

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by October 1988. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the Federal Register.

It is important that those interested in the Appalachian Integrated Pest Management Gypsy Moth Demonstration Project provide comments at that time. Comments on the DEIS should be as specific as possible and may address the adequacy of the statement, or the merits of the alternatives (see The Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviews of draft EIS's must structure their participation in the environmental review of that proposal, so that it is meaningful and alert the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 513 (1978) and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by March 1989. In the EIS, the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the draft EIS, and applicable laws, regulations and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18. The responsible official is Thomas N. Schenarts, Area Director, Northeastern Area, State and Private Forestry.

Dated: March 3, 1988.

Thomas N. Schenarts,
Area Director.

[FR Doc. 88-5209 Filed 3-9-88; 8:45 am]

BILLING CODE 3410-11-M

Intent to Prepare An Environmental Impact Statement; Humboldt National Forest, NV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an environmental impact statement for a proposal to analyze the cumulative impacts of several uses of a portion of the Mountain City Ranger District, Humboldt National Forest. The project area is the Independence Mountain Range approximately 50 miles north of Elko, Nevada. The area has experienced a succession of gold mining projects since 1980. In addition, it is grazed by livestock, is habitat for a threatened species, the Lahontan cutthroat trout, and provides important watersheds to downstream irrigation users.

The analysis will identify potential conflict areas between the various uses of the National Forest, develop thresholds of concern for the effect of various uses and activities on National Forest resources, and consider a range of alternatives to best manage and mitigate the various resources of the Humboldt National Forest. An alternative will be proposed which best meets resource needs and public issues.

Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process, which will be initiated March 21, 1988. All persons and organizations on the current Humboldt N.F. mailing list of those interested in NEPA projects will be notified and invited to participate in the scoping process. Public meetings will be scheduled and advertised if issues and concerns indicate a need for further comment on April 1, 1989, and the FEIS released on June 15, 1989.

DATE: March 1, 1988.

ADDRESS: Humboldt National Forest, 976 Mountain City Highway, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Jerry A. Davis, Forest Planner, Humboldt National Forest, 976 Mountain City Highway, Elko, NV 89801 Phone (801) 738-5171.

B.J. Graves,
Forest Supervisor.

[FR Doc. 88-5269 Filed 3-9-88; 8:45 am]

BILLING CODE 3410-11-M

South Fork Mountain Fire Timber Salvage and Resource Recovery; Shasta-Trinity National Forests, Trinity County, CA; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental

impact statement for the salvage of fire damaged timber and resource recovery work within the former South Fork Mountain roadless area released for multiple-use purposes by the 1984 California Wilderness Act.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans.

A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be "no action". Other alternatives will consider various methods for timber harvest and access and resource recovery measures.

Federal, State, and local agencies, potential timber purchasers, and other individuals or organizations who may be interested or affected by the decision will be invited to participate in the scoping process between now and April 1, 1988. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues; those which have been covered by a previous environmental analysis; and those issues not within the scope of this decision.

Basic resource data collection has been occurring since December, 1987, and its analysis is expected to take about two months. The draft environmental impact statement is scheduled to be available for public review and comment in May, 1988. The final environmental impact statement should be completed by July, 1988.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, is the responsible official. Written comments and suggestions concerning the analysis should be sent to: Forest Supervisor Robert R. Tyrrel, Shasta-Trinity National Forests, Attn: South Fork Mtn. Timber Salvage EIS, 2400 Washington Avenue, Redding, California 96001, by April 1, 1988.

Questions about the proposed action and environmental impact statement should be directed to District Ranger David Wickwire, Hayfork Ranger District, P.O. Box 159, Hayfork, CA 96041. Telephone (916) 628-5227.

Dated: March 4, 1988.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 88-5259 Filed 3-9-88; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

City Creek Debris Basin, Warner Draw Watershed (Work Plan October 1968), Utah

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the City Creek Debris Basin, Warner Draw Watershed (Work Plan October 1968), Washington County, Utah.

FOR FURTHER INFORMATION CONTACT: Francis T. Holt, State Conservationist, Soil Conservation Service, 125 South State Street, P.O. Box 11350, Salt Lake City, UT 84147, telephone 801 524-5050.

SUPPLEMENTARY INFORMATION: The environmental assessment of federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the construction of an uninstalled debris basin planned for flood control in the 1968 work plan. The planned work of improvement includes the construction of one debris basin (flood water retarding) dam. The dam will be approximately 70 feet in elevation from its lowest point and have a top width of 26 feet. The embankment will contain approximately 115,500 cubic yards.

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

No administrative action on implementation of the proposal will be taken until April 11, 1988.

Date: March 2, 1988.

Norman W. Priest,

Deputy State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 88-5268 Filed 3-9-88; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-038]

Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 16, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers seven manufacturers and/or exporters of this merchandise to the United States and the period November 1, 1985 through October 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from one respondent, Tsuyama Manufacturing Co., Ltd. Based on our analysis of the one comment received, we have changed the margins from those presented in the preliminary results. The final margins are now zero percent.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John R. Kugelmann, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 43780) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). The Department has now completed that administrative

review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of bicycle speedometers currently classifiable under TSUSA item numbers 711.9300, 711.9820, and 732.4200 and HS item numbers 9029.20, 9029.90, and 9029.10.80.

The review covers seven manufacturers and/or exporters of Japanese bicycle speedometers to the United States and the period November 1, 1985 through October 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received a written comment from one respondent, Tsuyama Manufacturing Co., Ltd.

Comment

Tsuyama contends that the Department erred in its foreign market value calculation by not considering rebates given to promote certain home market sales.

Department's Position

We agree and have allowed the rebates in our final calculations.

Final Results of the Review

As a result of the comment received, we have revised our preliminary results

and we determine that no margins exist for the period November 1, 1985 through October 31, 1986.

Manufacturer/Exporter	Margin (percent)
Tsuyama Mfg. Co., Ltd.	0
Tsuyama Mfg. Co., Ltd./Asia Machinery Trading Co.	0
Tsuyama Mfg. Co., Ltd./Himino & Co.	0
Tsuyama Mfg. Co., Ltd./H. Tano & Co., Ltd.	0
Tsuyama Mfg. Co., Ltd./Kozaki Trading Co., Ltd.	0
Tsuyama Mfg. Co., Ltd./Kuwahara Co., Ltd.	0
Tsuyama Mfg. Co., Ltd./Yagami Corporation	0

As provided for in section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required for these firms.

For any shipments from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (49 FR 24426, June 13, 1984, 52 HR 1170, April 10, 1987, and 52 FR 42330, November 4, 1987). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments of Japanese bicycle speedometers occurred after October 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese bicycle speedometers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: March 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5303 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-421-701]

Brass Sheet and Strip From The Netherlands; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation, Metallverken Nederland, B.V. (MN), to postpone the final determination to June 15, 1988, as permitted in section 735(a) (2) (A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673(a) (2) (A)).

Based on this request, we are postponing our final determination as to whether sales of brass sheet and strip from The Netherlands have occurred at less than fair value until not later than June 15, 1988. We are also postponing our public hearing from March 28, 1988, until May 4, 1988.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT:

John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

On February 8, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 3612). This notice stated that if the investigation proceeded normally, we would make our final determination by April 18, 1988.

On February 12, 1988, MN requested a postponement of the final determination until not later than June 15, 1988, pursuant to section 735(a) (2) (A) of the Act. This respondent accounts for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than June 15, 1988.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on May 4, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Individuals who wish to participate in the hearing must submit a request to the Acting Assistant Secretary for Import

Administration, Room B-099, at the above address within 10 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Acting Assistant Secretary for Import Administration by April 27, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 4, 1988.

[FR Doc. 88-5304 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-003]

Fireplace Mesh Panels From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from one respondent and one importer, the Department of Commerce has conducted an administrative review of the antidumping duty order on fireplace mesh panels from Taiwan. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period June 1, 1986 through May 31, 1987. The review indicates the existence of dumping margins during the period.

Where company-supplied information was inadequate, we used the best information available for assessment purposes. As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the rate found as best information available.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT:

Arthur N. DuBois or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5289/2923.

SUPPLEMENTARY INFORMATION:**Background**

On July 13, 1984, the Department of Commerce ("the Department") published in the *Federal Register* (49 FR 28592) the final results of the last administrative review of the antidumping duty order on fireplace mesh panels from Taiwan (47 FR 24616, June 7, 1982). One respondent and one importer requested, in accordance with § 353.53a(a) of the Commerce Regulations, that we conduct an administrative review for the period June 1, 1986 through May 31, 1987. We published a notice of initiation on July 17, 1987 (52 FR 27036). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Yeh Sheng did not provide an adequate response to our antidumping questionnaire. For this firm we used the best information available which was the highest rate in the last administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are fireplace mesh panels. Such panels are defined as pre-cut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of the kind used in the manufacture of safety screening for fireplaces. This product is currently classifiable under TSUSA numbers 642.7800 and 654.0045 and HS item numbers 7314.49.00 and 7323.99.00.

The review covers one exporter of this merchandise to the United States and the period from June 1, 1986 through May 31, 1987.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the margin for Yeh Sheng is 6.40 percent.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments for hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

For any shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the last administrative review (49 FR 28592, July 13, 1984). For any future entries of this merchandise from a new exporter not covered in this or in prior administrative reviews, whose first shipment occurred after May 31, 1987, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 6.4 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese fireplace mesh panels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1)

of the Tariff Act (19 U.S.C. 1674(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: March 2, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5305 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-009]

Industrial Nitrocellulose From France; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke.

SUMMARY: In response to a request by the petitioner and Societe Nationale des Poudres et Explosifs ("SNPE"), the Department of Commerce ("the Department") has conducted an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers SNPE, the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the periods August 1, 1984 through July 31, 1985 and August 1, 1985 through July 31, 1986. The review indicates no dumping margins for the period August 1, 1984 through July 31, 1985 and *de minimis* dumping margins for the period August 1, 1985 through July 31, 1986.

As a result of the review, the Department has tentatively determined to revoke the antidumping duty order.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1986, the Department published in the *Federal Register* (51 FR 43227) the final results of its last administrative review of the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). We began the first review under our old regulations. After

the promulgation of our interim final regulations, SNPE requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notices of initiation on July 9, 1986 (51 FR 24883) and September 16, 1986 (51 FR 32817). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. These imports are currently classifiable under TSUSA item 445.2500 and under HS item numbers 3012.20.00 and 3912.90.00.

The review covers SNPE, the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the period August 1, 1984 through July 31, 1986.

United States Price

In calculating United States price the Department used purchase price, as

defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the c.i.f., packed price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, foreign inland insurance, ocean freight, marine insurance, and brokerage and handling. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, inland insurance, brokerage and handling, rebates, discounts, quantity adjustments, and differences in the physical characteristics of the merchandise, credit, and packing. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination to Revoke

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for Societe Nationale des Poudres et Explosifs:

Period	Margin (percent)
8/1/84 to 7/31/85	0
8/1/85 to 7/31/86	0.07

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication.

Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in these comments, may be filed not later than 32 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market

value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for by section 751(a)(1) of the Tariff Act, since the margin for SNPE is 0.07 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for SNPE. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1986 and who is unrelated to the reviewed firm, no cash deposit shall be required. These cash deposit requirements are effective for all shipments of French industrial nitrocellulose, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

SNPE has requested revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement. SNPE has had zero or *de minimis* antidumping duty margins for three years and is the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States. Therefore, we tentatively determine to revoke the order on industrial nitrocellulose from France. If this revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and sections 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Date: March 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5306 Filed 3-9-88, 8:45 am]

BILLING CODE 3510-DS-M

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire From New Zealand Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from one manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period August 2, 1985 through November 30, 1986. The review indicates the existence of dumping margins for the firm during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1985, the Department of Commerce ("the Department") published in the *Federal Register* (50 FR 49740) an antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. One manufacturer/exporter requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 20, 1987 (52 FR 2123). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item number(s) and the HS item number(s) with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and

Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this review are low-fuming brazing copper rod and wire (LFB), principally of copper and zinc alloy ("brass"), of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classifiable under TSUSA numbers 612.6205, 612.7220, and 653.1500, and HS item numbers 7407.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60, and 8311.90.00.

The review covers one manufacturer/exporter of low-fuming brazing copper rod and wire from New Zealand, McKechnie Metal Products, Ltd. ("McKechnie"), to the U.S. and the period August 2, 1985 through November 30, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed, c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage fees, foreign inland freight, ocean freight, and marine insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, because sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based upon the packed, free on railroad price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, rebates, quantity discounts, differences in credit expenses, and differences in packing. We denied McKechnie's claim for a level-of-trade adjustment because McKechnie was unable to show what additional expenses were incurred due

to sales at a different level of trade. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists during the period:

Manufacturer/ exporter	Time period	Margin (percent)
McKechnie	8/2/85-11/30/86	2.18

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margin shall be required for McKechnie.

For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipment occurred after November 30, 1986, and who is unrelated to McKechnie, a cash deposit of 2.81 percent shall be required. These deposit requirements are effective for all shipments of low-fuming brazing copper rod and wire from New Zealand entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Dated: March 2, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5307 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-041]

Synthetic Methionine From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on synthetic methionine from Japan. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period July 1, 1986 through June 30, 1987. The review indicates there are no known shipments of this merchandise by Nippon Soda/Mitsui and Central Soya (Canada) to the United States during the period of review, and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 38953) the final results of its last administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973). One manufacturer/exporter and one third-country reseller requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the review on July 7, 1987 (52 FR 25445). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will

be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers in all new petitions filed with the Department.

A reference copy of the proposed Harmonized System Schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of synthetic methionine currently classifiable under TSUSA item 425.0430 and HS item number 2922.42.50.

The review covers one manufacturer/exporter and one third-country reseller of Japanese synthetic methionine to the United States and the period July 1, 1986 through June 30, 1987. There were no known shipments of this merchandise to the United States by Nippon Soda/Mitsui or Central Soya (Canada) during the period, and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1986 through June 30, 1987:

Manufacturer/exporter/third country reseller (country)	Margin (percent)
Nippon Soda/Mitsui.....	1 3.35
Nippon Soda/Mitsui/Central Soya (Canada).....	1 79.0

¹ No shipments during the period; margins based on last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in

those comments, may be filed not later than 32 days after the date of publication.

As provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for all firms listed above. For any shipments from the remaining known manufacturers, exporters, or third-country resellers not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (52 FR 38953, October 20, 1987, 52 FR 10600 April 2, 1987, and 48 FR 55153, December 9, 1983).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1987 and who is unrelated to any reviewed firm or previously reviewed firm, a cash deposit of 3.35 percent shall be required. This is in accordance with our practice of not using the most recently reviewed rate as a basis for cash deposit for new shippers when we have based the recent rate on best information available.

These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: March 4, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Transportation.

[FR Doc. 88-5308 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-427-016]

Industrial Nitrocellulose From France; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an

administrative review of the countervailing duty order on industrial nitrocellulose from France. We preliminarily determine the net subsidy to be 0.26 percent *ad valorem* for the period January 1, 1984 through December 31, 1984 and 0.10 percent *ad valorem* for the period January 1, 1985 through December 31, 1985, rates we consider *de minimis*. We also tentatively determine to revoke the countervailing duty order. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTAL INFORMATION:

Background

On January 9, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 833) the final results of its last administrative review of the countervailing duty order on industrial nitrocellulose from France (48 FR 28521, June 22, 1983). On June 27, 1986, a foreign exporter, Societe Nationale des Poudres et Explosifs ("SNPE"), requested an administrative review of the order in accordance with 19 CFR 355.10. We published the initiation on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedule of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers as well as the TSUSA item numbers in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for

consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the import specialists at their local Customs office to consult the schedule.

Imports covered by the review are shipments of French industrial nitrocellulose containing between 10.8 percent and 12.2 percent nitrogen, not explosive grade nitrocellulose which contains over 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous, synthetic chemical produced by the action of nitric acid on cellulose. Industrial nitrocellulose comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing ink. Such merchandise is currently classifiable as, cellulosic plastic materials, other than cellulose acetate, under TSUSA item 445.2500. This product is currently classifiable under HS item 3912.2000. We invite comments from all interested parties on this HS classification.

The review covers the period January 1, 1984 through December 31, 1985, and nine programs: (1) A grant from the Ministry of Defense; (2) a grant from DATAR; (3) the assumption of labor costs for civil servants; (4) a government equity infusion; (5) research and development assistance; (6) financing from the Fonds de Développement Economique et Social; (7) loans from Credit National; (8) financing from the Caisse des Depots et Consignations; and (9) loans from the Ministry of Research and Industry. SNPE is the only known French producer and exporter of this merchandise to the United States.

Analysis of Programs

(1) Grant from the Ministry of Defense

The Ministry of Defense provided a grant to SNPE in 1975 to modernize the company's Bergerac plant, where industrial nitrocellulose (among other products) is produced. Because this grant was limited to a specific industry, we preliminarily determine that it constitutes a subsidy.

To calculate the benefit, we applied the grant methodology outlined in the Subsidies Appendix to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (40 FR 18006, April 26, 1984). We allocated the grant over 10 years, the average useful life of assets in the nitrocellulose industry, according to the Asset Guideline Classes of the Internal

Revenue Service. We used as the discount rate the 1975 national average corporate bond rate in France (as reported in Morgan Guaranty Trust Company's *World Financial Markets*) because we have no information on SNPE's weighted cost of capital for that year. On this basis, we preliminarily determine the benefit from this program to be 0.17 percent *ad valorem* for the period January 1, 1984 through December 31, 1984. For 1985, there is no benefit from this program because the stream of benefits from the 1975 grant ended in 1984.

(2) DATAR Grant

The Delegation a l'Amenagement du Territoire et a l'Action Regionale ("DATAR") coordinates the programs of various government agencies that provide incentives to establish or expand businesses in certain regions of France. SNPE received a grant from DATAR in 1979 to improve the production facilities and general infrastructure of the Bergerac plant. Because grants received from DATAR provide benefits to specific regions, we preliminarily determine that this program constitutes a subsidy.

Using the same methodology as described for the Ministry of Defense grant, we allocated the grant over 10 years and used as the discount rate the 1979 national average corporate bond rate in France. On this basis, we preliminarily determine the benefit from this program to be 0.03 percent *ad valorem* for the period January 1, 1984 through December 31, 1984 and 0.03 percent *ad valorem* for the period January 1, 1985 through December 31, 1985.

(3) Assumption of Labor Costs for Civil Servants

Some employees of SNPE retain government civil service status ("status employees") as a result of the company's change from a government agency to a government-owned private corporation in 1971. SNPE is responsible for paying the wages and benefits of all its employees. In general, SNPE's contribution for certain nonwage benefits, such as health insurance, pensions, and unemployment insurance, is lower for its status employees than for other employees. Because the French government assumes part of SNPE's contributions for status employees, we preliminarily determine that this program constitutes a subsidy.

To calculate the benefit, we took the average annual difference between SNPE's nonwage benefits for status employees and those for other employees and multiplied that amount

by the number of status employees involved in industrial nitrocellulose production. We allocated the result over total sales of industrial nitrocellulose during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.06 percent *ad valorem* for the period January 1, 1984 through December 31, 1984 and 0.07 percent for the period January 1, 1985 through December 31, 1985.

(4) Government Equity Infusion in SNPE

In 1984, the Government of France increased its equity holdings in SNPE by a small amount. In the final determination (48 FR 11971, March 22, 1983) and the final results of our last administrative review in this case, we found that the creation of SNPE in 1971 and the government's equity infusion between 1972 and 1983 were consistent with commercial considerations. To determine whether the purchase of additional shares by the French government was made in accordance with commercial considerations, we examined SNPE's financial statements for 1983, the most recent information available at the time of the 1984 infusion.

As in previous years, SNPE had a positive cash flow and earned a profit in 1983. The company's profitability ratios (return on equity, return on sales), leverage ratios (equity as a percentage of debt, capitalization ratio), and liquidity ratios (current ratio, quick ratio, times interest earned) all remained healthy in 1983. Given SNPE's favorable financial data at the time of the French government's equity infusion, we preliminarily determine that the government's 1984 equity infusion in SNPE does not constitute a subsidy. Since the French government made no new equity investments in SNPE in 1985, we preliminarily determine that there were no benefits received from this program in 1985.

(5) Other Programs

We also examined the following programs and preliminarily determine that SNPE did not use them during the period of review:

- (a) Research and development assistance;
- (b) Financing from the Fonds de Développement Economique et Social;
- (c) Preferential loans from Credit National;
- (d) Financing from the Caisse des Depots et Consignations; and,
- (e) Loans from the Ministry of Research and Industry.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine the net subsidy to be 0.26 percent *ad valorem* for the period January 1, 1984 through December 31, 1984, and 0.10 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department therefore intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after January 1, 1984 and on or before December 31, 1985.

Further, the Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

SNPE has requested that the Department revoke the countervailing duty order based on the absence of a net subsidy for at least two years, as provided in 19 CFR 355.42(b). Furthermore, in accordance with 19 CFR 355.42(e), SNPE has agreed in writing to an immediate suspension of liquidation and reinstatement of the order if circumstances develop which indicate that the merchandise thereafter imported into the United States is benefiting from a net subsidy on its manufacture, production, or exportation. We have found *de minimis* benefits for reviews covering the period March 1, 1983 through December 31, 1985. In addition, the benefits declined in each year during this period and, based on our grant methodology, would continue to decline if we conducted further administrative reviews. We therefore tentatively determine to revoke the countervailing duty order.

If the revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The revocation will not become final until the completion of an administrative review establishing no net subsidy for the period January 1, 1986 through the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request

disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication, or the first workday afterwards. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review, tentative determination to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1)) and (c) and §§ 355.10 and 355.42 of the Commerce Regulations (9 CFR 355.10 and 355.42).

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Date: March 4, 1988

[FR Doc. 88-5309 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-001]

Certain Refrigeration Compressors From the Republic of Singapore; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. The review covers the period January 1, 1985 through December 31, 1985 and three programs.

As a result of the review, the Department preliminarily determines that Matsushita Refrigeration Industries (Singapore) Pte. Ltd., Matsushita Electric Trading (Singapore) Pte. Ltd., and the Government of the Republic of Singapore, the signatories to the suspension agreement, have complied with the terms of the agreement. The Department also preliminarily determines that the net bounty or grant to be offset by the export charge is 4.95 percent of the f.o.b. value of the merchandise. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade

Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 51167) a notice of suspension of countervailing duty investigation regarding certain refrigeration compressors from the Republic of Singapore. On November 26, 1986, the petitioner, Tecumseh Products Company, Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the suspension agreement. We published the initiation of the administrative review on December 18, 1986 (51 FR 45364). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Singaporean hermetic refrigeration compressors rated not over one-quarter horsepower. Such merchandise is currently classifiable under TSUSA item number 661.0900. These products are currently classifiable under HS item number 8414.30.00-0.

We invite comments from all interested parties on this HS classification.

The review covers one producer, Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and its exporter, Matsushita Electric Trading (Singapore) Pte. Ltd. (METOS). These two companies, along with the Government of the Republic of Singapore, are the signatories to the suspension agreement. The review covers the period January 1, 1985 through December 31, 1985, and three programs.

Tecumseh alleged that a significant increase in exports of compressors from Japan to the United States and a decrease in exports to the United States from Singapore may be the result of transshipment of Singapore-produced compressors through Japan, which is a violation of the suspension agreement.

At verification, we examined company and government figures for exports of the subject compressors as well as invoices and bills of lading for country of destination and shipping routes. We found that: (1) the value of exports from Singapore to the United States during the review period compared very closely to statistics for U.S. imports of the subject compressors from Singapore during the same period; (2) that METOS' few shipments of the subject compressors to Japan were to its parent company and that the total value of these shipments was far too small to account for the increase in the quantity of Japanese compressor exports to the United States; and (3) that exports from Singapore were often routed on ships that had stopovers in Japan but that these exports were included in the reported value of exports from Singapore that we verified. In short, we found no evidence to indicate that METOS was transshipping compressors to the United States through its parent in Japan.

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part IV

Part IV of the Economic Expansion incentives Act allows a 90 percent tax exemption on a company's profits if the company is designated as an export enterprise. MARIS is so designated and used this tax exemption during the period of review.

MARIS exports only refrigeration compressors, all of them through METOS. To calculate the benefit, we divided MARIS' tax savings from the program by the f.o.b. value of METOS' total exports of MARIS' refrigeration compressors. On this basis, we

preliminarily determine the benefit from this program to be 4.95 percent of the f.o.b. value of the merchandise.

(2) Financing through the Monetary Authority of Singapore

The suspension agreement prohibits MARIS and METOS from applying for and receiving any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of the subject refrigeration compressors to the United States. During verification, we found that neither MARIS nor METOS received any financing through the Monetary Authority on the subject compressors exported to the United States during the review period. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

(3) Technical Assistance Fee Payments

Tecumseh claims that the technical assistance fees paid by MARIS to its Japanese parent company, Matsushita Electric Industrial Co., continue to remain extremely high and excessively reduce MARIS' tax liability.

The Economic Development Board ("EDB") and the Inland Revenue Department review technical assistance fees to ensure that they are not excessive. We found at verification that the EDB not only approved the amount of royalty payments made by MARIS for technical assistance but also, after extensive review and revision of the technical assistance agreement, approved an increase in technical assistance fees. Therefore, we preliminarily determine that these payments are not excessive and do not confer a countervailable benefit on MARIS.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charge of 5.86 percent for the period January 1, 1985 through July 25, 1985 and 4.92 percent for the period July 26, 1985 through December 31, 1985. We also preliminarily determine the net bounty or grant to be 4.95 percent of the f.o.b. value of the merchandise for the review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the net bounty or grant calculated by the Department.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the period January 1, 1985

through July 25, 1985, a negative adjustment may be made to the provisional export charge of 5.86 percent established in the notice of suspension of countervailing duty investigation and that, for the period July 26, 1985 through December 31, 1985, a positive adjustment must be made to the provisional export charge of 4.92 percent established in the notice of the final results of the first administrative review of suspension agreement (50 FR 30493, July 26, 1985). For the period January 1, 1985 through July 25, 1985, the Government of Singapore may refund the difference to the companies. For the period July 26, 1985 through December 31, 1985, the Government of Singapore shall collect, in accordance with section B.4.c. of the agreement, the difference plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department.

The Department intends to notify the Government of Singapore that the provisional export charge on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 4.95 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments covered by it account for at least 85 percent of imports of the subject Singaporean refrigeration compressors into the United States. Our information indicates that the two companies accounted for 100 percent of imports into the United States of this merchandise during the review period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and § 355.10 of the Commerce

Regulations (50 FR 32556, August 13, 1985).

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Date: March 4, 1988.

[FR Doc. 88-5310 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Hot-Rolled Steel Sheet; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Australia, U.S.-EC and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Venezuela Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain hot-rolled steel sheet used in the production of pipe and tubing.

DATE: Comments must be submitted on or before March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Australia, U.S.-EC and U.S.-Korea Arrangements Concerning Trade in Certain Steel Products, Article 7 of the U.S.-Venezuela Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand

in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for four types of hot-rolled steel sheet, 29.5 to 66.0 inches in width, 0.143 to 0.335 inch in thickness, with coil weights of 20,000-55,000 pounds. The products are:

(A) 0.28-0.34 percent carbon, 1.30-1.60 percent manganese, 0.10-0.25 percent silicon, a minimum of 0.025 percent aluminum, and a maximum of 0.008 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of American Petroleum Institute (API) grade J-55 oil country tubular goods (OCTG).

(B) 0.35-0.39 percent carbon, 1.30-1.60 percent manganese, 0.10-0.25 percent silicon, a minimum of 0.025 percent aluminum, and a maximum of 0.008 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of API grade K-55 OCTG.

(C) 0.35-0.39 percent carbon, 1.30-1.60 percent manganese, 0.10-0.25 percent silicon, a minimum of 0.025 percent aluminum, 0.15-0.25 percent molybdenum, and a maximum of 0.008 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of API grade N-80 OCTG.

(D) 0.22-0.26 percent carbon, 0.90-1.15 percent manganese, 0.10-0.25 percent silicon, a minimum of 0.025 percent aluminum, and a maximum of 0.005 percent sulphur and 0.028 percent phosphorus, for use in the manufacture of: American Society of Testing Materials specification A-53 pipe, grades A and B; API 5L pipe, grades A, B, and X; and API grades N-80 and L-80 OCTG, or proprietary grade S-95 OCTG.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than (March 21, 1988). Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import

Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5311 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-supply Review on Certain Wire Rod; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and Request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short-supply determination under Article 8 of the U.S.-Trinidad and Tobago Arrangement Concerning Trade in Certain Steel Products, with respect to certain low carbon steel wire rod.

DATE: Comments must be submitted on or before March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Trinidad and Tobago Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "... determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors) an additional tonnage shall be allowed for such product or products. . . ."

We have received a short-supply request for AISI grade 1006 wire rod 5.5mm in diameter, and AISI grade 1010 wire rod in diameters ranging from 5.5mm through 12mm.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 21, 1988. Comments should focus on the economic factors

involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-5312 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Semi-Finished Steel Billets; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, the U.S.-Australia Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Trinidad Arrangement Concerning Trade in Certain Steel Products, with respect to certain semi-finished steel billets.

DATE: Comments must be submitted no later than March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC, U.S.-Brazil, U.S.-Australia, and U.S.-Trinidad steel arrangements, and the U.S.-Finland Understanding, provides that if the U.S.

determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for ingot/bloom cast and continuously cast carbon and alloy steel billets, including cold-heading and cold-finishing quality, high carbon quality, welding quality, and special quality billets. The requested billets are of a square cross section measuring 4 inches on each side, and in lengths of 30-34 feet and 39-41 feet.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 21, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 4, 1988.

[FR Doc. 88-5313 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review of Certain Wide Tinplate; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products with respect to certain wide tinplate, in coils, for use in the production of beverage and soup cans.

DATE: Comments must be submitted on or before March 21, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import

Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-0159 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain tinplate, in coils, in widths of 43 to 47 inches, thicknesses of 0.0099 to 0.01298 inch, with tin-coating weights of 0.20 to 0.35 pounds of tin per base box, temper designation T4-CA, and shot-blast finish, for use in the manufacture of beverage and soup cans.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 21, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 3, 1988.

[FR Doc. 88-5314 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the *Federal Register* identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88-00002." A summary of the application follows.

Applicant: Olde South Traders, Inc., 101 N. Monroe Street, Suite 1000, Tallahassee, Florida 32301. Contact: James A. Edson, President. Telephone: (904) 496-2944.

Application number: 88-00002.
Date Deemed Submitted: February 26, 1988.

Members (in addition to applicant): Daniels Lumber, Inc.; Metcalf Lumber Company, Inc.; T.R. Miller Mill Company, Inc. (Controlling Entity: Longlead Limited); Nekoosa.

Packaging Corporation (Controlling Entity: Great Northern Nekoosa Corporation); Rex Lumber Company; and Varn Wood Products Company.

Summary of the Application

Export Trade

Products

Processed and semi-processed forest products ("forest products") including but not limited to semi-finished lumber, finished lumber, treated wood products, wood chips, shavings, and veneer.

Export Trade Facilitation Services (as they relate to the export of products)

Marketing, selling, brokering, shipping, handling, common marking and identification, consulting, international market research, advertising and sales promotion, insurance, product research and design, legal assistance, trade documentation, communication and processing of foreign orders, warehousing, foreign exchange, financing and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Olde South Traders, Inc. (OSTI) seeks certification to:

(1) Enter into exclusive agreements with its Members to act as their exclusive Export Intermediary for forest products.

(2) Meet with its Members to negotiate and agree on the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market, including, but not limited to, the price at which a Member will sell its forest products and related services for export, and the quantity of products each Member will commit to the foreign sale or bid opportunity. During the course of such meetings, the following information may be exchanged:

- Information that is already generally available to the trade or public.
- Information that is specific to a particular Export Market, including, but

not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies and product specifications by geographical area, and by individual customers within the Export Market.

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentations and service and export sales financing).

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market.

e. Information on OSTI's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by customers located in Export Markets, and reports by foreign sales representatives.

f. Information on supply and demand for forest products in export trade including the quantities of particular products desired by export customers, the supply of such products, based on domestic supply and demand, available for export trade, anticipated export prices, quality standards, packaging standards and primary production schedules.

g. Information on specific prices and quantities involved in specific domestic transactions furnished by each Member individually, and on a confidential basis, to OSTI's manager who will use such information to compute averages and trends regarding domestic prices and quantities for disclosure to the Members in an aggregated form. The manager shall not disclose to any Member the specific information furnished by any other Member.

(3) Enter into exclusive agreements with other Export Intermediaries for the sale of forest products in the Export Markets, whereby:

a. The Export Intermediary agrees not to represent competitors of OSTI in the sale of forest products and related services in any Export Market.

b. The Export Intermediary agrees not to buy forest products and related services from OSTI's competitors.

(4) Enter into exclusive agreements with foreign customers of forest products and related services offered by OSTI whereby the customer agrees not to purchase the forest products and related services from OSTI's competitors.

(5) Discuss and agree with its Members on the export prices to be

charged by OSTI or its Members for the sale of forest products or related services direct to an Export Market or to a domestic or foreign exporter for ultimate sale in an Export Market.

(6) Limit membership in OSTI.

(7) Publish and distribute a list of the export prices to be charged by OSTI or its Members.

(8) Allocate orders for export sales, and divide profits from such sales, among its Members as provided in the membership agreement between OSTI and its Members.

(9) Purchase forest products from its Members and non-members for direct export to an Export Market or for sale to a domestic or foreign exporter for ultimate sale in an Export Market.

Date: March 3, 1988.

John E. Stiner,

Director, Office of Export Trading Company Affairs.

[FR Doc. 88-5237 Filed 3-8-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION OF FINE ARTS

The 1988 National Capital Arts and Cultural Affairs Program; Grant Applications

Notice is hereby given that the administration of Pub. L. 99-190, as amended, authorizing the National Capital Arts and Cultural Affairs Program has been transferred from the National Endowment of Humanities to the Commission of Fine Arts.

Accordingly all requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006. Phone: 202-566-1066.

Deadlines for receipt of submission of grants applications is 15 April 1988.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national reputation, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 88-5208 Filed 3-9-88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool and Man-Made Fiber Textiles and Textile Products from the Socialist Republic of Romania

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1988. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6497. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of wool and man-made fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the designated limits.

Background

Under the terms of section 204 of the Agricultural Act of 1956, as amended, the Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania has been translated to establish a specific limit for man-made fiber yarn in Category 604; a consultation level for wool and man-made fiber non-apparel products in Categories 410, 414, 464-469, 611-629, 665-670, as a group, (Group II), within the group individual levels for Categories 410, 465, 618, and 666; a specific limit for wool and man-made fiber apparel products in Categories 431-459, 630-659, as a group (Group III), within the group specific limits for Categories 433/434, 435, 443, 444, 635, 638/639, 643/644, (not knit), and 645/646; designated consultation levels for

Categories 442, 448, 459, 633, 634, 640, 641, 643/644 (knit), 647, 648 and 659; and a minimum consultation level for Category 642, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988.

Charges will be made to the limits established for the foregoing categories as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated [see Federal Register notice 52 FR 47745, dated December 11, 1987].

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

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

Committee For the Implementation of Textile Agreements

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

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 11, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12-mo. restraint limit
604.....	3,484,601 pounds.
Group II	
410, 414, 464-469, 611-629, 665-670, as a group.	12,000,000 square yards equivalent.
Sublevels within the Group II	
410.....	200,000 square yards.
465.....	1,550,000 square feet.
618.....	2,000,000 square yards.
666.....	256,410 pounds.

Category	12-mo. restraint limit
Group III	
431-459, 630-659, as a group.	44,961,880 square yards equivalent.
Sublevels within Group III	
433/434	6,674 dozen.
435	3,451 dozen.
442	6,500 dozen.
443	97,236 numbers.
444	50,028 numbers.
448	6,500 dozen.
459	75,000 pounds.
633	44,199 dozen.
634	53,687 dozen of which not more than 17,083 dozen shall be in non-knit coats in Category 634pt. ¹ and not more than 36,604 dozen shall be in knit coats in Category 634pt. ²
635	59,891 dozen.
638/639	339,492 dozen.
640	70,150 dozen.
641	44,850 dozen.
642	39,326 dozen.
643pt./644pt. (not knit) ³	472,812 numbers.
643pt./644pt. (knit) ⁴	24,996 numbers.
645/646	233,944 dozen.
647	80,737 dozen.
648	57,746 dozen.
659	224,359 pounds.

¹ In Category 634pt. (non-knit), only TSUSA numbers 376.5609, 376.5635, 381.3120, 381.3323, 381.3331, 381.3341, 381.6968, 381.8664, 381.9505, 381.9520, 381.9525, 381.9530, 381.9836, 381.9838, 381.9842, 381.9962, 384.2321, 384.9132 and 791.7471.

² In Category 643pt. (knit), only TSUSA numbers 381.2315, 381.2325, 381.2835, 381.2857, 381.3551, 381.3554, 381.6671, 381.6673, 381.8523, 381.8706, 381.8808, 381.8811, 381.9222, 381.9223, 381.9232, 384.1902, 384.1906, 384.1911, 384.8217 and 791.7460.

³ In Category 643pt./644pt. (non-knit), only TSUSA numbers 381.3162, 381.3164, 381.3166, 381.3168, 381.3561, 381.6976, 381.8670, 381.9560, 381.9562, 381.9564, 381.9566, 381.9568, 381.9972, 384.2327, 384.2328, 384.2329, 384.2331, 384.2332, 384.2333, 384.2334, 384.2336, 384.2337, 384.2774, 384.2775, 384.2776, 384.2777, 384.2778, 384.2779, 384.2780, 384.2781, 384.2782, 384.5673, 384.5674, 384.5675, 384.5677, 384.5678, 384.5679, 384.5680, 384.5681, 384.5683, 384.7863, 384.7865, 384.7866, 384.7867, 384.7869, 384.7870, 384.7871, 384.7873, 384.7875, 384.9156, 384.9157, 384.9158, 384.9159, 384.9161, 384.9162, 384.9163, 384.9164, 384.9166 and 384.9674.

⁴ In Category 634pt./644pt. (knit), all TSUSA numbers except those listed in footnote ³.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984 between the governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not

subject to specified limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the bilateral agreement, referred to above, will be made to you by letter.

The conversion factor for Categories 638/639 is 15.5 and for Categories 433/434 is 42.1 square yards equivalent per dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5263 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of an Import Limit for Sweaters of Silk Blend and Other Vegetable Fibers in Categories 845/846 Produced or Manufactured in Thailand

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the commissioner of Customs to be effective on March 11, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota reopenings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish a restraint limit for sweaters of silk blend and other vegetable fibers in Categories 845/846 for the period January 29, 1988 through December 31, 1988.

Background

On February 17, 1988 a notice was published in the *Federal Register* (53 FR 4699) which announced that the Government of the United States had requested consultations with the Government of Thailand with respect to

sweaters of silk blend and other vegetable fibers in Categories 845/846.

During consultations held February 17-19, 1988, between the Governments of the United States and Thailand, no solution was reached on a mutually satisfactory limit for these categories. Therefore, the United States Government has decided to control imports of Categories 845/846, exported during the prorated period which began on January 29, 1988 and extends through December 31, 1988, at a level of 199,106 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel categories with Tariff Schedules of the United States Annotated (See *Federal Register* notice 52 FR 47745, dated December 11, 1987).

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of Thailand, further notice will be published in the *Federal Register*.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Silk Apparel and Vegetable Fiber Apparel Agreements of December 2 and 3, 1985 between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 11, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber apparel in Categories 845/846, produced or manufactured in Thailand and exported during the prorated period which began on January 29, 1988 and extends through December 31, 1988, in excess of 199,106 dozen¹.

Textile products in Categories 845/846 which have been exported to the United States prior to January 29, 1988 shall not be subject to the limit established in this directive.

Textile products in Categories 845/846 which have been released from the custody

¹ The limit has not been adjusted to account for any imports exported after January 28, 1988.

of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5264 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1988. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current restraint limits for cotton and man-made fiber textile products in Categories 335, 340/640, 340-Y/640-Y (sublimit), 350 and 361, produced or manufactured in Turkey and exported to the United States.

Background

A CITA directive dated December 31, 1987 (53 FR 165) established import restraint limits for certain cotton and man-made fiber textile products, including Categories 335, 340/640, 340-Y/640-Y (sublimit), 350 and 361, produced or manufactured in Turkey and exported during the six-month period which began on January 1, 1988 and extends through June 30, 1988.

Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended, and at the request of the Government of Turkey, the limits for cotton and man-made fiber textile products in Categories 335, 340/640, 340-Y/640-Y (sublimit), 350 and 361 are being increased for carryover for the current six-month period which began on January 1, 1988 and extends through June 30, 1988.

In addition, the limit published in the directive of December 31, 1987 (53 FR 166) for Category 347 for the period July 1, 1987 through December 31, 1987 was incorrect. It should be 300,000 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, dated December 11, 1987).

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

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington,
D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 31, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the six-month period which began on January 1, 1988 and extends through June 30, 1988.

Effective on March 11, 1988, the directive of December 31, 1987 is amended to include the following adjustments to the previously established restraint limits for cotton and man-made fiber textile products in Categories 335, 340/640, 340-Y/640-Y (sublimit), 350 and 361, as provided under the terms of the bilateral agreement of October 18, 1985, as amended¹

¹ The provisions of the bilateral agreement provide, in part, that: (1) specific limits may be increased by 7 percent swing during an agreement period and (2) specific limits may be increased by carryover and carryforward up to 11 percent of which carryforward shall not constitute more than 6 percent of the applicable category limit.

Category	Adjusted 6-mo. limit ¹
335.....	47,298 dozen.
340/640	280,536 dozen of which not more than 142,740 dozen shall be in Categories 340-Y/640-Y. ²
350	49,447 dozen.
361	245,708 numbers.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

² In Categories 340-Y/640-Y, only TSUSA numbers 381.0522, 381.3132, 381.3142, 381.3152, 381.5500, 381.5610, 381.5625, 381.5637, 381.5660, 381.9535, 381.9547 and 381.9550.

Also effective on March 11, 1988, the December 31, 1987 directive concerning exports during the period July 1, 1987 through December 31, 1987 is amended to correct the restraint limit for Category 347 to 300,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1)

Sincerely,

Donald R. Foote

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-5265 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Requirements Concerning Textile and Apparel Products from Malaysia

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 11, 1988. For further information contact Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the bilateral agreement of July 1 and 11, 1985, as amended and extended, between the Governments of the United States and Malaysia, agreement was reached to amend the visa requirements to reflect that, effective on March 11, 1988, shipments of textile and apparel products exported from Malaysia on and after March 11, 1988, which are imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample

shipments valued at U.S. \$250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice 52 FR 47745, dated December 11, 1987).

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.
March 7, 1988.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of August 20, 1987, concerning export visa and exempt certification requirements for certain textile and apparel products, produced or manufactured in Malaysia.

Effective on March 11, 1988, entry of all textile and apparel products exported from Malaysia on or after March 11, 1988, which are imported for the personal use of the importer and not for resale, regardless of value, and all properly marked commercial sample shipments valued at U.S. \$250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 88-5286 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Federative Republic of Brazil Concerning Cotton and Man-Made Fiber Textile Products in Categories 342/642 and 607pt.

March 7, 1988.

FOR FURTHER INFORMATION CONTACT:
Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

Background

The purpose of this notice is to announce that on December 30, 1987 and January 29, 1988, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of

the United States and the Federative Republic of Brazil, the Government of the United States requested consultations concerning imports of cotton and man-made fiber skirts in Categories 342/642 and man-made fiber staple yarn with cotton in Category 607pt., respectively, produced or manufactured in Brazil and exported to the United States. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

According to the terms of the bilateral agreement, which expires on March 31, 1988, the United States Government reserves the right to establish limits of 38,640 dozen for the ninety-day consultation period which began on December 30, 1987 and extends through March 28, 1988 for Categories 342/642 and 802,252 pounds for the prorated consultation period which began on January 29, 1988 and extends through March 31, 1988 for Category 607pt.

Summary market statements concerning these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see *Federal Register* notice, 52 FR 47745, dated December 11, 1987).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 342/642 and 607pt., under the agreement with the Federative Republic of Brazil, or in any other aspect thereof, or to comment on domestic production or availability of apparel products included in the categories, is invited to submit such comments or information in ten copies to Mr. James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs function of the United States."

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Brazil—Market Statement

Cotton and Man-Made Fiber Skirts (Category 342/642)

December 1987.

Summary and Conclusions

U.S. imports of cotton and man-made fiber skirts (Category 342/642) from Brazil were 143,494 dozen during year ending October 1987, more than two times the 65,263 dozen imported a year earlier. During the first ten months of 1987, imports of cotton and man-made fiber skirts (Category 342/642) from Brazil reached 140,710 dozen, two and a half times the 56,375 dozen imported during the same period of 1986, more than two times the total imported in calendar year 1986, and more than four times the 32,798 dozen shipped in calendar year 1985.

The level of imports of cotton and man-made fiber skirts from Brazil is causing a real risk of disruption to the U.S. market.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts has been on the decline, dropping from 9,101 thousand dozen in 1982 to a depressed 7,940 thousand dozen average during 1984 and 1985, a decline of 13 percent. Production in 1986 recovered slightly, reaching 8,126 thousand dozen, but remained below the 1983 level and was 11 percent below the 1982 level. U.S. production data for cotton and man-made fiber skirts is available only through the first half of 1987. If U.S. production in the second half of 1987 is the same as production in the first half of 1987, 1987 production of cotton and man-made fiber skirts will be equal to the 1983 level, but still 9 percent below the 1982 level. The domestic manufacturers' share of the market dropped 25 percentage points in just four years, falling from 83 percent in 1982 to 58 percent in 1986. The U.S. market share is expected to continue its decline into 1987, falling another 9 percentage points, to less than 50 percent. U.S. imports are expected to have a greater share of the U.S. market than domestic manufacturers in 1987.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber skirts (Category 342/642) at 5,995 thousand dozen in 1986 were more than three times the amount imported in 1982. The sharp and substantial increase in imports continued into 1987. Cotton and man-made fiber skirt imports (Category 342/642) during the first ten months of 1987 were 7,094 thousand dozen, 39 percent above the 5,112 thousand dozen imported during the same period in 1986. The ratio of imports to domestic production nearly quadrupled, increasing from 20 percent in 1982 to 74 percent in 1986. The ratio is expected to increase above 100 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

The majority of Brazil's cotton and man-made fiber skirt imports enter under the

following TSUSA numbers: 384.5251—women's cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; 384.5120—women's cotton woven, denim skirts, not ornamented; 384.2552—women's and girls' man-made fiber woven skirts, ornamented; and 384.8660—women's man-made fiber knit skirts and culottes, not ornamented. These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

Brazil—Market Statement

Category 607 Part—Polyester Yarn Containing Cotton

January 1988

Summary and Conclusions

U.S. imports of polyester/cotton sales yarn—Category 607 part—from Brazil were 3.3 million pounds during the year ending October 1987, 61 percent above the 2.1 million pounds imported a year earlier. Brazil is the second largest supplier of these yarns, accounting for 17 percent of the total imports.

The sharp and substantial increase of low-valued fine count yarn imports from Brazil is severely disrupting the U.S. fine count polyester and cotton blended sales yarn market.

U.S. Production and Market Share

U.S. production of fine count blended yarns of polyester and cotton dropped from 107.7 million pounds in 1983 to 86.7 million in 1985, a 19 percent decline. Production in 1986 partially recovered from 1985, however the improvement was short-lived. During the first three quarters of 1987, production dropped 21 percent below the level in the comparable period of 1986.

The U.S. producers' share of the market for domestically produced and imported fine count blended sales yarns of polyester and cotton declined from 96 percent in 1983 to 78 percent in 1986. The U.S. producers' share continued its decline during the first ten months of 1987, dropping to 69 percent.

Imports and Import Penetration

U.S. imports of Category 607 part from all sources reached 17.3 million pounds during the first ten months of 1987, three times the 5.6 million imported a year earlier and double the amount imported during calendar year 1986. This surge made a major contribution to the overall rise in imports of fine count blended yarns of polyester and cotton—Categories 300 part/301 part/ 607 part. Total imports of combined category parts reached a record level 32.3 million pounds during the first ten months of 1987, 33 percent above the comparable period in 1986. Category 607 part imports accounted for all of this increase.

The ratio of imports to domestic production of fine count blended yarns of polyester and cotton doubled in 1986, reaching 28.7 percent. The ratio increased another 70 percent, reaching 45.6 percent during the first ten months of 1987.

Duty-Paid Import Values and U.S. Producers' Price

Category 607 part imports from Brazil entered under TSUSA No. 310.6034, polyester yarns containing cotton, not textured. The

duty-paid landed values of these imports are below U.S. producers' prices for comparable yarn.

[FR Doc. 88-5267 Filed 3-9-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; 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 of the Committee: Army Science Board (ASB).

Dates of Meeting: 31 March and 1 April 1988.

Times of Meeting: 0830-1630 Hours, each day.

Place: Fort Rucker, Alabama.

Agenda: The Army Science Board's Ad Hoc Subgroup on U.S. Army Aeromedical Research Laboratory; Fort Rucker, Alabama, will meet for follow-on briefings and discussions on the research being carried out by the Laboratory. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-5290 Filed 3-9-88; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Withdrawal of Intention To Prepare a Draft Environmental Impact Statement; Trinity River Project

AGENCY: U.S. Army Corps of Engineers, DOD, Fort Worth District.

ACTION: Notice of Intent to withdraw a Notice of Intent to prepare a draft Environmental Impact Statement.

SUMMARY: 1. Notice of Intent to prepare a Supplemental Environmental Impact Statement on the Channel to Liberty feature of the Trinity River Project (Liberty, Texas) was published in the Federal Register on April 30, 1987. Studies conducted since that date have surfaced a number of uncertainties which must be resolved prior to continuing feasibility studies. Among those uncertainties are the status of potential flood control and navigation

beneficiaries and Federal interest in a project that complies with current Federal guidelines for navigation. Because of these uncertainties, further studies have been deferred. The Channel to Liberty feature of the Trinity River Project has been reclassified from the "Active" to "Inactive" category of Civil Work projects; and a Supplemental Environmental Impact Statement will not be prepared at this time.

2. Reasonable Alternatives. The decision to defer further studies represents selection of the "No Action" alternative at this time. If at some future date the issues leading to this decision are resolved, studies may be resumed consistent with authorization and funding. In that event, and at the appropriate time, Notice of Intent to prepare an appropriate document under the National Environmental Policy Act would again be issued.

3. Scoping Process and Schedule. Since the Notice of Intent to prepare a Supplemental Environmental Impact Statement is being withdrawn, no further scoping will be conducted at this time. No public meetings are scheduled and there is no schedule for release of an EIS.

ADDRESS: For additional information, contact Mr. Paul Hathorn, Environmental Project Manager, Environmental Resources Branch, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, Texas 76102-0300. Telephone (817) 334-2095.

Dated: February 25, 1988.

John G. Rigby,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 88-5213 Filed 3-9-88; 8:45 am]

BILLING CODE 3710-FR-M

Defense Logistics Agency

Cooperative Agreements Revised Procedures

AGENCY: Defense Logistics Agency, DoD.

ACTION: Cooperative agreements; proposed revised procedures.

SUMMARY: This proposed revised procedure implements Chapter 142, Title 10, United States Code, as amended, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing Cooperative Agreements to support procurement technical assistance programs established by state and local governments and private non-profit organizations. Subpart III of this

issuance establishes the administrative procedures proposed to be implemented by the DLA to enter into such agreements for this purpose.

DATES: Comments will be accepted until April 12, 1988. Proposed effective date: April 19, 1988.

FOR FURTHER INFORMATION CONTACT: Sim Mitchell, Program Officer, Office of Small and Disadvantaged, Business Utilization (DLA-UM), Defense Logistics Agency, Alexandria, VA 22304-6100, Telephone (202) 274-6471.

I. Background Information

The Department of Defense (DoD) has developed programs designed to expand the industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition among the private sector have been supplemented by many state and local governments and other entities where their interest in improving the business climate and economic development in their communities is compatible with these DoD objectives. To assist in furthering this mutual interest, a Cooperative Agreement Program has been established by which the DoD can share the cost of supporting existing procurement technical assistance programs being conducted by state and local governments and private non-profit entities and encourage the establishment of similar programs in their communities.

The Fiscal Year (FY) 1985 DoD Authorization Act, Public Law 98-525, amended Title 10, United States Code, by adding a Chapter 142 which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cooperative agreements with state and local governments, and other non-profit entities (hereinafter referred to as eligible entities as defined in Section 3 of this procedure) to establish and conduct procurement technical assistance programs during FY 85. The program continues under Title 10, United States Code, as amended.

The Congress has authorized a total of \$7 million to support the program during FY 88. Of this total, \$500,000 is available for Indian programs only and such programs will be executed centrally by HQ DLA. Accordingly, each of the nine Defense Contract Administration Regions (DCASRs) within DLA will be authorized to award approximately \$700,000 of the remaining \$6.5 million authorized for FY 88 as its share of program costs to applicants within the geographical area under its cognizance.

In cases where the area being or to be serviced by the eligible entity encompasses more than one DCASR's area of geographic cognizance, eligible entities are to submit their proposals to the one DCASR having cognizance over the preponderant part of the area being or to be serviced. Only one proposal will be accepted from a single eligible entity. The addresses and geographic areas under the cognizance of each of the DCASRs, together with the name of the Associate Director of Small Business who is designated the Procurement Technical Assistance Cooperative Agreement Program Manager, is at Encl 1.

Additional Limitations placed on these funds follow:

(a) DoD cost sharing shall not exceed 50% of the net cost of a single program, excluding any Federal funds and other income, except that the DoD share may be increased up to 75% for an existing program or new start that qualifies solely as a distressed area. In no event, shall the DoD share of the net program cost exceed \$150,000.

(b) Eligible entities are not to subcontract more than 10% of their total program costs for private consulting services to support the program.

(c) These limitations may be modified by the Headquarters DLA Policy Council as necessary to comply with legislative or other requirements applicable to any restricted funds.

The DoD presently provides procurement and technical assistance to business firms through its network of Small Business Specialists located in industrial centers around the country. The Associate Directors of Small Business located in these industrial centers at the DCASRs will be available to provide eligible entities such assistance as necessary to explain and interpret the solicitation requirements when issued, to provide general guidance in preparing proposals, and to provide training and other technical assistance to recipients of cooperative agreements.

Procurement technical assistance given to clients for marketing their goods and services to other Federal Agencies and/or state and local governments will not be considered when evaluating proposals. However, eligible entities are encouraged to consider supplementing their DoD program to include those marketing opportunities for business firms located in the area being or to be serviced.

The purpose of this proposed revised procedure is to make available to all eligible entities the prerequisite requirements and policies which govern

the award of cooperative agreements by the DLA. This procedure is necessary to establish a procedure which governs the award and administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a cooperative agreement with the DLA, the DLA has determined that this rule does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that this proposed Cooperative Agreement Procedure implements policies already published by the Office of Management and Budget pursuant to Chapter 63, Title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA Cooperative Agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts.

II. Other Information

The language contained in the current Cooperative Agreement Procedure limited the period of coverage to the FY 87 Program in that it addressed the FY 87 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. This proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 88 programs.

The DLA has determined that the proposed procedure does not involve substantial issues of fact or law and the procedure is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, public hearings were not conducted.

Since this is the DLA's permanent procedure covering cooperative agreements pursuant to 31 U.S.C. 6301 et seq., using Procurement Contracts and Grant and Cooperative Agreements, additional comments are invited on the procedures and are to be submitted to the Defense Logistics Agency, ATTN: DLA-UM, Cameron Station, Alexandria, VA 22304-6100. All comments received by 12 April 1988 will be evaluated to determine if any revisions should be made to Subpart III.

Issued in Alexandria, VA on 8 March 1988.

For the Defense Logistics Agency,
Ray W. Dellas,
Staff Director, Office of Small and
Disadvantaged Business Utilization.

COOPERATIVE AGREEMENT REGULATION GENERAL PROGRAM

III. Proposed Revision to DLA Procedure—Cooperative Agreements

1. Scope

(a) This procedure implements Chapter 142 of Title 10, United States Code, as amended, and establishes requirements for the award and administration of Cost Sharing Cooperative Agreements entered into between the Defense Logistics Agency (DLA) and eligible entities. Under these agreements Department of Defense (DoD) financial assistance will be provided to recipients. Such assistance will cover the DoD share of the cost of establishing new and/or maintaining existing Procurement Technical Assistance (PTA) Programs for furnishing PTA to business entities.

(b) A cooperative agreement is a binding legal instrument which reflects a relationship between the DLA and a cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient for the accomplishment of the requirements described therein. The requirement shall be authorized by Federal statute and substantial involvement shall be anticipated between the DLA and the recipient during performance of the agreement.

(c) When proposals for cooperative agreements are obtained through the issuance of a DLA Solicitation for Cooperative Agreement Proposals, hereinafter referred to as a SCAP, the contents of this procedure shall be incorporated, in part or in whole, into the program solicitations for the purpose of establishing administrative provisions for the execution and administration of DLA Cooperative Agreements. Program solicitations may include additional administrative provisions when such provisions are required by program legislation or are not included in this procedure.

(d) The DoD share of an eligible entity's proposal and award recipient's net program cost (NPC) shall not exceed 50%, except in the case of a distressed area (as defined in paragraph 3(d) below) the DoD share may be increased to an amount not to exceed 75%. However, in no event is the DoD share of any single net program cost to exceed \$150,000.

(e) In order to qualify for the DoD share of 75% of net program costs, an eligible entity is required to service

clients exclusively in a distressed area. In the event an eligible entity plans to service both a distressed and a non-distressed area, it may segregate its NPC between the distressed area and non-distressed area (as detailed in paragraph 8 of this procedure) when submitting its application for a Cooperative Agreement with maximums of 75% and 50% being requested respectively. Absent such segregation, and if any part of the geographic area being or to be serviced includes a non-distressed area, the applicant will be entitled to a maximum of 50% as the DoD share.

(f) During each fiscal year (FY) for which funding is authorized for the PTA program at least one cooperative agreement for either an existing program or a new start shall be awarded within the geographic cognizance of each of the nine Defense Contract Administration Services Regions (DCASRs) within the DLA. In cases where the area being or to be serviced by an eligible entity encompasses more than one DCSR's area of geographic cognizance, the eligible entity should submit its applications to the one DCASR having cognizance over the majority of the area being or to be serviced. Only one application will be accepted from a single eligible entity.

2. Policy

(a) It is the DLA policy to encourage and maximize open and fair competition when awarding cooperative agreements for establishing or maintaining existing PTA programs. Cooperative agreements will be awarded on a competitive basis as a result of the issuance of the (SCAP). However, the DoD, through the DLA, reserves the right to make an award to an applicant whose application is competitive based on other factors detailed in paragraph 5(d) below that would enhance competition for DoD goods and services. For example, an award may be denied to reduce or eliminate overlapping or duplicate coverage in selected geographic areas or where the best interest of the government will not be served.

(b) SCAPs inviting the submission of proposals shall be given the widest practical dissemination to all known eligible entities and to those that request copies subsequent to its issuance. All eligible entities that have advised the DCASR of their interest in submitting a proposal under the SCAP will be invited to participate in a presolicitation conference to be held at a location to be designated by the DCASR approximately 30 calendar days prior to the SCAP closing date.

(c) Any solicitation issued in accordance with this procedure shall not be considered to be an offer made by the DoD and will not obligate the DLA to make any awards under this program. The DoD is also not responsible for any monies expended or expense incurred by applicants prior to the award of any cost sharing cooperative agreement.

(d) The award of a cooperative agreement under this program shall cover a twelve month performance period.

(e) The award of a cooperative agreement shall not in any way obligate the DoD to enter into a contract or give preference for the award of a contract to a concern or firm which becomes a client of the award recipient.

(f) To assist the DoD in achieving its socio-economic goals, applicants and cooperative agreement recipients are to give special emphasis to assisting small disadvantaged business firms in participating in DoD contracting opportunities by making a concerted effort to identify such firms and by providing marketing and technical assistance to such firms, particularly where such firms are referred to a recipient for assistance by any DoD component.

(g) The Federal Acquisition Regulation (FAR) contains numerous clauses and provisions which provide operational guidance and spell out the rights and obligations of parties in Federal Procurement transactions. Although the regulation is not applicable per se to cooperative agreements, some of the provisions contained in the Regulation may be suitable for inclusion in cooperative agreements. Therefore, the clauses and provisions contained therein may be made a part of all cooperative agreement solicitations and awards if not otherwise covered under Office of Management and Budget (OMB) Circulars A-102 (Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments) and A-110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations). Where appropriate, the language of the clauses may be changed and will be modified to change "contract" to "cooperative agreement" and "contractor" to "participant" as necessary. Clauses and provisions specified as mandatory will not be subject to negotiations. Such clauses and provisions will only be used if the applicable FAR dollar threshold(s) are met. For example, if there is a \$100,000 threshold for applying the clause, that particular clause will only be used in the cooperative agreement if

the total program cost of the project (including both the proposer's and DoD's share of total program costs) exceeds that threshold. However, the addition of any clauses and provisions not identified in the solicitation or the modification of clauses and provisions which are not designated as being mandatory may be negotiated.

(h) Award recipients are not required to obtain or retain private consulting services for any extended period of time. Accordingly, any costs being proposed for such services are not to exceed 10% of the total program cost. Costs in excess of 10% included in the eligible entity's proposal will cause the proposal to be rejected.

(i) Reasonable quantities of government publications, such as "Selling to the Military" may be furnished to award recipients at no cost, subject to availability.

(j) For the purpose of executing cooperative agreements, the DCASR Associate Director of Small Business who has been delegated the authority to execute cooperative agreements shall not require appointment as a contracting officer.

(k) Beginning with FY 88, participation in the cooperative agreement program will be limited to 60 calendar months and/or five cooperative agreement awards with each containing a twelve month performance period. Each applicant will be required to identify in its proposal the number of months of program participation subsequent to FY 87.

(l) The DoD share of the net program cost shall be reduced by 20 percent for each year the recipient participates in the program. For the 60 month participation period, regardless of whether they are consecutive, the percent of DoD funds requested will be reduced as follows:

Year	Annual Reduction in Percent of DoD Share of Funding
1	0
2	20
3	40
4	60
5	80
6	100

(m) Each cooperative agreement recipients area of performance will be limited to the geographical area specified in its proposal.

(n) To the extent that the annual DoD Authorization and Appropriation Acts provided for restricting some part of the total funds authorized to accommodate special socio-economic requirements, any specific requirements related to the

restricted funds which differ from the requirements of this regulation will be identified in the solicitation for cooperative agreement proposals.

3. Definitions

The following definitions apply for the purpose of this procedure.

(a) *Client*—A recognized business entity, including corporations, partnerships, or sole proprietorships organized for profit, which are small and other than small, that have the potential or are seeking to market their goods or services to the DoD.

(b) *Cooperative Agreement Offer/Application/Proposal*—An eligible being operated or being planned. The offer binds the eligible entity to perform the services described therein if selected for an award, and upon the proposal being incorporated into the cooperative agreement award document.

(c) *DoD Cooperative Agreement Program*—Provides assistance to state and local governments and other nonprofit entities in establishing or maintaining procurement technical assistance activities to help business firms market their goods and services to the DoD and other government activities.

(d) *Distressed Area*—The geographic area being or to be serviced by an eligible entity in providing procurement technical assistance to business firms physically located within that area that:

(1) Has a per capita income of 80% or less of that State's average, or

(2) Has an unemployment rate of at least 1% above the national average for the most recent 24-month period in which statistics are available from the U.S. Department of Labor in all of the geographic areas being or to be serviced. A distressed area cannot include any areas that do not meet this criteria.

(3) Is a "Reservation" which includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(e) *Eligible Entities*—include:

(1) *State Government*—a State of the United States, the District of Columbia, a territory or possession of the United States, an agency on instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(2) *Local Government*—a unit of government in a State, a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or

another instrumentality of a local government.

(3) *Private, Non-profit Organization*—any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3)-(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(f) *Eligible Entities, Special Programs*—Those organizations authorized by legislation to participate in programs set-aside for specifically designated groups. Such entities will be identified in the solicitation specifically issued therefore.

(g) *Direct Cost*—Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any costs, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective.

(h) *Existing Program*—Includes any PTA type program that has been established and operated by an eligible entity for at least 12 months prior to the closing date for submission of proposals to the DLA, as well as all prior recipients of cooperative agreements with the DLA, regardless of the length of time their PTA program has been in operation.

(i) *Indian*—A person who is a member of an Indian tribe.

(j) *Indian Economic Enterprise*—Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit; provided, that such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(k) *Indian Tribe*—Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. section 1601 et seq.] which is recognized by the Federal Government as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(l) *Indirect Cost*—Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost.

(m) *In-kind Contributions*—Represent the value of noncash contributions provided by the eligible entity and non-

Federal parties. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(n) *New Starts*—Includes all eligible entities that have not had an established and operating PTA program for a full 12-month period prior to the closing date for submission of proposals under a SCAP. It also includes any eligible entities' program that otherwise meets the definition of an existing program, but whose proposal anticipates expanded geographical coverage or a significant increase in the scope of operations. With this exception, a recipient of any cooperative agreement with the DLA will not be eligible for consideration as a new start, regardless of how long its program has been in operation.

(o) *Net Program Cost*—Total program cost (including all authorized sources) less any program income and/or other federal funds not authorized to be shared.

(p) *Private Consultant Services*—Services offered by private profit seeking individuals, organizations or otherwise qualified business entities to provide marketing and technical assistance to cooperative agreement recipients or business firms seeking contracts with Federal, State and local government organizations.

(q) *Procurement Technical Assistance*—Program organized to generate employment in and improve the general economy of a locality by assisting business firms in obtaining defense and other government contracts. Its purpose is to provide detailed counseling assistance, information and personal instructions to business firms in increasing their opportunities to sell their products or services to the Defense Department either directly as prime contractors or indirectly as subcontractors under DoD contracts, other government agencies and the private sector.

(r) *Reservation*—Includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act [43 U.S.C. Section 1601 et seq.].

(s) *Solicitation for Cooperative Agreement Proposals (SCAP)*—A document issued by DLA containing provisions and evaluation criteria

applicable to all applicants that apply for a PTA cooperative agreement.

(t) *Special Program*—A program by which funds are targeted by legislation for the purpose of sharing the cost of providing procurement technical assistance to specifically designated groups.

(u) *Total Program Cost*—Includes all funds from all sources to include in-kind contributions and all income received from all sources as a result of operating the program. Any federal funds proposed for use in establishing or conducting the program must have prior approval for such use.

4. Program Description

The objective of the PTA Program is to assist eligible entities in providing marketing and technical assistance to businesses, hereinafter referred to as clients, in selling their goods and services to the DoD, thus assisting the DoD in its acquisition goals and at the same time enhancing the business climate and economies of the communities being served. Specific program requirements to accomplish this objective will vary depending on locations, the types of industries and business firms within the community, the level of economic activity in the community, and many other factors. However, the SCAP will describe the following minimum features that a comprehensive PTA Program should generally include:

(a) *Personnel*—Professional personnel qualified to counsel and advise clients regarding DoD procurement policies and procedures. The areas of consideration should relate to marketing techniques and strategies, pricing policies and procedures, preaward procedures, postaward contract administration, quality assurance, production and manufacturing, financing, subcontracting requirements, bid preparation, and specialized acquisition requirements for such things as construction, research and development, and data processing.

(b) *Marketing Tools*—Should include, as a minimum, the Commerce Business Daily, Federal Acquisition Regulation, DoD FAR Supplement, commodity listings from DoD contracting activities, Federal and military specifications and standards and other Federal Government publications.

(c) *Networking*—Techniques for providing assistance throughout the area being or to be serviced by locating assistance offices in areas of industrial concentration, arrangements with other entities or organizations, establishing data links, and through other appropriate means.

(d) *Fees and Service Charges*—In the event the applicant presently charges or plans to charge clients a fee or service charge, details as to the basis for the amount of the fee to be charged must be described. Any fees earned under the program are to be included as part of the total program cost.

(e) *Performance Measurement*—Should include a means of periodically measuring program effectiveness in achieving the objective described above. Factors to consider in establishing time phased goals and techniques for measuring progress in its achievement should include the number and types of assistance rendered, such as marketing and accounting; the number of clients added to the DoD and other Federal Agency bidders mailing lists, the Minority Vendor Profile System of the Minority Business Development Agency, the Procurement Automated Source System (PASS) of the Small Business Administration and the value of prime and subcontract awards received by clients resulting from the program.

5. Procedures for processing SCAPs and Award of Cooperative Agreements

(a) The SCAP will be developed and prepared by the HQ DLA Cooperative Agreement Policy Council and will be issued by HQ DLA or through each DCASR. The Policy Council will be comprised of representatives from the HQ DLA Offices of General Counsel, Contracting, Comptroller, Congressional Affairs and Small Business. The Staff Director, Small and Disadvantaged Business Utilization shall serve as the Policy Council Chairman and final appeal authority for disagreement between the DCASR Associate Director of Small Business and the eligible entity and/or Cooperative Agreement recipient. The Council will be responsible for reviewing the results of the DCASR's evaluations and recommendations, for assuring that adequate funds are made available to the DCASR and for considering other factors in the selection process necessary to fully protect the interests of the government.

(b) For special programs, HQ DLA will appoint an evaluation panel which will perform the functions specified herein for the DCASR evaluation panel. The review and approval authority for special program award selections will be the HQ DLA Cooperative Agreement Policy Council.

(c) The evaluation of proposals submitted in response to the SCAP and the selection of award recipients will be conducted as detailed below:

(1) Proposals will be evaluated by a specially constituted evaluation panel established at each DCASR. The panel will be comprised of representatives from the DCASR offices of small business, contract management, comptroller, and other offices deemed appropriate by the DCASR Commander. However, the DCASR Associate Director of Small Business, who has been delegated the authority to execute the cooperative agreements, shall not serve as a panel member. A member of the Office of Counsel will be appointed to the panel, but will serve in an advisory capacity only.

(2) Prior to making a comprehensive evaluation of a proposal, the evaluation panel will make an initial evaluation to determine if the proposal contains sufficient technical, cost, and other information, has been signed by a responsible official authorized to bind the eligible entity and generally meets all requirements of the SCAP. If the proposal does not meet those requirements, it will be rejected and a comprehensive evaluation will not be made. In such case, a prompt reply will be sent to the proposer indicating the reason for its proposal not being accepted. Revised proposals will not be accepted from applicants whose proposals are rejected after the initial evaluation unless the revised proposal is postmarked or is hand delivered prior to the closing date of the SCAP. Any proposal received which is unsigned or otherwise rejected will not be given additional review consideration and will be retained with other unsuccessful applications by the DCASR Associate Director of Small Business.

(3) The initial evaluation of an otherwise acceptable proposal will include a review to verify the accuracy of the classification of the proposal concerning the entity's stated program status as existing or a new start. In the event the evaluation panel considers the proposal status misclassified, it will review the matter with the applicant. If there is disagreement, the panel's determination of the application's classification will be final and not subject to further review.

(4) Proposals which pass the initial evaluation will be subjected to a comprehensive evaluation. The basic purpose of the comprehensive evaluation is to assess the relative merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives, considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. Each proposal will be evaluated by the panel in accordance

with stated criteria and ranked in order of excellence to determine which will best further specific program goals. All findings and recipient selections will be documented, signed by panel members, and retained to provide an adequate record to support the panel's decisions. Upon completion of its review, the evaluation panel will submit the panel results and its recommendations to the Associate Director of Small Business.

(5) The Associate Director of Small Business will determine whether sufficient funds have been allocated to the DCASR to cover the DoD share of costs and will review the panel recommendations and results for completeness. Upon completion of the fund analysis and review of the panel results, the Associate Director of Small Business shall forward the panel results and recommendations and comments (if any) to the HQ DLA Policy Council for review.

(d) The HQ DLA Policy Council will review the DCASR evaluation panel's recommendations. The results of its review and its recommendations will be submitted to the DCASR Commander for approval. In developing its recommendations the Council may consider additional factors necessary to fully protect the interest of the Government. These factors may include, but are not limited to, economic downturns that effect national security in selected geographic areas; terminations of major DoD contracts; availability of funds; the potential for increasing competition for selected goods and services required by the DoD; the existence of other procurement technical assistance programs in the area; and compliance with any legislative requirement imposed on program funds.

(e) After approval by the DCASR Commander, the cooperative agreement will be executed by the DCASR Associate Director of Small Business.

6. Evaluation Criteria

(a) The evaluation factors for new starts and existing programs, with their relative importance, will be specified in the SCAP.

(b) The following evaluation factors (which may be subject to change) will be considered as the evaluation criteria for new starts:

(1) The types and qualifications of personnel assigned or to be assigned to the program.

(2) The quality of the PTA Program in existence or being planned for:

- Developing new clients.
- Assisting existing clients.
- Any program established or to be established to identify and provide

extraordinary assistance to small disadvantaged business firms.

(3) The number of clients in the geographic area being or to be serviced. This includes carrying out the DoD policy described in paragraph 2(f) above for which the socio-economic status of clients should be estimated.

(4) The amount and percentage of net program costs to be shared by DoD.

(5) The level of unemployment in the area being or to be serviced.

(c) The evaluation criteria for existing programs (which may be subject to change) will include all of the above factors, as well as the following:

(1) The eligible entity's development, performance and effectiveness in conducting its PTA Program, including achievements against established goals and any special achievements relative to small disadvantaged business firms.

(2) The amount of subcontracting to private consultants.

(d) As this program applies both to existing PTA Programs and to those being planned, certain of these evaluation factors will be evaluated based upon stated implementation policy for programs being planned. For example, the types and qualifications of personnel assigned will require applicants that do not presently have established but are planning programs to identify the standards to be used in selecting the personnel.

(e) The amount of subcontracting to private consultants is limited to no more than 10% of total program costs for both existing programs and new starts. In evaluating this factor for existing programs the smaller the amount of such subcontracting the greater the weight that will be given. However, in the case of new starts, equal weight will be given to all offers, subject only to the 10% limitation.

7. DoD Funding

(a) Any funds authorized for the PTA program will be allocated equitably among the nine DCASRs to cover the DoD share of the PTA program cost for existing programs and for new starts. The SCAP will identify the total amount of funds authorized for the related fiscal year.

(b) If there is an insufficient number of satisfactory proposals in a DCASR to allow effective use of the funds allocated, the Headquarters DLA Cooperative Agreement Policy Council will reallocate the funds among the DCASRs as appropriate.

8. Cost Sharing Criteria and Limitations

(a) Cost sharing is a generic term denoting any situation wherein the

Government does not fully fund the participant's total allowable costs required to accomplish the defined project or effort. The term encompasses concepts such as cost participation, cost matching, cost limitations (direct or indirect), and participation in kind.

(b) The DoD share of net program costs shall not exceed 50%, except in a case where an eligible entity meets the criteria of a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%.

(c) In no event shall the DoD share of net program costs exceed \$150,000 for any single proposal.

(d) Cost contributions may be to either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the eligible entity as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

(e) The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions, any fees and service charges to be earned under the program, and any other Federal Agency funding (including grants, loans, and cooperative agreements) authorized to be used for this program. The type and value of any in-kind contribution will be limited to no more than 25% of the total annual budget. However, any fees, service charges or Federal funds provided under another Federal financial assistance award, including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contributions of the eligible entity. Although the fees, services charges and

other authorized federal funds must be included in the annualized estimated budget, they cannot be included for cost sharing purposes. Inclusion of other Federal funds in the program is subject to the terms of the award instrument containing such funds or written advice being obtained from the awarding Agency(s) authorizing such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

(f) In submitting its budget, an eligible entity that services, or plans to service clients exclusively in areas that qualify as distressed areas may submit a single budget and request a maximum of 75% DoD share of net program costs (NPC), subject to 8(e) above. An entity that services or plan to service clients exclusively in non-distressed areas or in areas that include both distressed and non-distressed areas may submit a single budget and request a maximum of 50%. In those cases where the geographic area being or to be serviced includes both distressed areas and non-distressed areas, the budget may be divided based on a reasonable and logical distribution of TPC between these two discrete areas, and submitted as a single proposal. In such case, costs must also be divided between these two budget items as costs are incurred.

(g) Recipients of cooperative agreements will be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

(h) The SCAP will also provide that indirect costs are not to exceed 100% of direct costs.

(i) In the event the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a result of operating the PTA Program, the estimated amount of such

reimbursement is to be clearly identified in the proposed budget and shall be included as part of the total budgeted costs.

(j) The Federal cost principles as stated in the OMB Circulars listed below will be used as guidelines to determine allowable costs in performance of the program:

(1) OMB Circular No. A-21, Cost Principles for Educational Institutions.

(2) OMB Circular No. A-87 (FMC 74-4), Cost Principles Applicable to Grants and Contracts with State and Local Governments.

(3) OMB Circular No. A-122, Cost Principles for Non-profit Organizations.

9. Administration

(a) Cooperative Agreements will be assigned to the cognizant DCASR for payment and for postaward administration by the Associate Director of Small Business.

(b) The Associate Director of Small Business at the cognizant DCASR will be responsible for reviewing recipients performance at least twice during the effective period of each cooperative agreement, to include a review of budgeted versus actual expenditures, and other performance factors. The results of the periodic reviews will be furnished to the recipient and a copy will be provided to the Headquarters DLA Cooperative Agreement Policy Council no later than 30 calendar days after completion of each review.

(c) For eligible entities covered by OMB Circular No. A-102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments, or OMB Circular No. A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM MANAGERS

(Addresses and geographic areas under the cognizance of each of the DCASRs, together with the name of the Associate Director for Small Business who is designated the Procurement Technical Assistance Cooperative Agreement Program Manager follow:)

State or area	DCASR	Associate Director for small business
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.	DCASR Atlanta, 805 Walker Street, Marietta, GA 30060-2789.	Mr. Harold O. Watson, Telephone (404) 429-6195, Toll Free: 1-800-331-6415 (GA Only); 1-800-551-7801, Room Number 104.
Connecticut (Except Fairfield County), Maine, New Hampshire, Massachusetts, New York (All Counties except Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester), Rhode Island, Vermont.	DCASR Boston, 495 Summer Street, Boston, MA 02210-2184.	Mr. Edward J. Fitzgerald, Telephone (617) 451-4318, Toll Free: 1-800-321-1861, Located on 8th Floor
Illinois, Indiana	DCASR Chicago	Mr. James L. Kleckner
Wisconsin	O'Hare Int'l Airport P.O. Box 66475 Chicago, IL 60666-0475.	Telephone (312) 694-6020, Toll Free: 1-800-637-3848 (IL Only); 1-800-826-1046, Room Number 107
Kentucky, Michigan, Ohio, Pennsylvania (Crawford, Erie, and Mercer Counties only).	DCASR Cleveland Federal Office Building, 1240 East 9th Street Cleveland, OH 44199-2063.	Ms. Wilma R. Combs, Telephone (216) 522-5122, Toll Free: 1-800-551-2785, Room Number 1849.
Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	DCASR Dallas 1200 Main Street Dallas, TX 75202-4399.	Mr. Kenneth E. Strack, Telephone (214) 670-9205, Room Number 640.
Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	DCASR Los Angeles 222 N. Sepulveda Boulevard El Segundo, CA 90245-4320.	Ms. Shirley B. Johnson, Telephone (213) 355-3260, Toll Free: 1-800-624-7372 (Alaska, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) (CA Only): 1-800-251-5285.
Connecticut (Fairfield County Only), New Jersey (Northern 12 Counties), New York, (Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Ulster, and Westchester Counties Only).	DCASR New York 201 Varick Street, New York, NY 10014-4811	Mr. John E. Mulreany, Telephone (212) 807-3050, Toll Free: 1-800-251-6969, Room Number 1061
Delaware, District of Columbia, Maryland, New Jersey (Except for Northern 12 Counties), Pennsylvania, (All Counties except Crawford, Erie and Mercer), Virginia, West Virginia.	DCASR Philadelphia, 2800 South 20th St., P.O. Box 7478, Philadelphia, PA 19101-7478.	Mr. Roger C. Rhyner, Telephone (215) 952-4006, Toll Free: 800-258-9503, (New Jersey, Delaware, Maryland, Virginia, West Virginia, and District of Columbia) (PA Only) 800-843-7694, Room Number 129.
Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	DCASR St. Louis 1136 Washington Ave., St. Louis, MO 63101-1194.	Mr. Thomas Moore, Telephone (314) 263-6617, Toll Free: 800-325-3419, Third Floor.

[FR Doc. 88-5262 Filed 3-9-88; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF ENERGY

National Coal Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and 41 CFR Part 101-6, Final Rule on Federal Advisory Committee Management, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National

Coal Council has been renewed until December 31, 1989.

The renewal of the National Coal Council has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Department of Energy Organization Act (Pub. L. 95-91), and the Final Rule.

Further information regarding this advisory committee may be obtained from Gloria Decker (202) 586-8990.

Issued in Washington, DC, on March 8, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88-5287 Filed 3-9-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA88-3-34-000]

Florida Gas Transmission Co.;
Proposed Changes in FERC Gas Tariff
March 4, 1988.

Take notice that on February 29, 1988 Florida Gas Transmission Company

(FGT), P.O. Box 1188, Houston, Texas 77251-1188 tendered for filing the following tariff sheets to its FERC Gas Tariff.

FERC Gas Tariff, First Revised Volume No. 1

24th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

46th Revised Sheet No. 128

FGT states that 24th Revised Sheet No. 8 and 46th Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3 to (i) adjust the Primary Adjustment to reflect a decrease in FGT's average cost of gas purchased for sale and company use; and (ii) to adjust the Balancing Adjustment to amortize over the six-month adjustment period beginning April 1, 1988 the balance in the current period Unrecovered Purchased Gas Cost Account as of December 31, 1987.

The proposed effective date of the above referenced tariff sheets is April 1, 1988.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, Original Volume No. 3, and interested State Commissions and is being posted.

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. All such motions or protests should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5241 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-206-035]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 26, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern)

tendered for filing proposed changes to its F.E.R.C. Gas Tariff.

Northern states that the purposes of this filing is to implement the terms of its Stipulation and Agreement (Settlement) filed in the above-proceeding.

Northern states that the compliance filing is composed of three major segments: 1) final settlement sales and transportation rates, 2) changes to implement new services and modifications to existing tariffs as ordered by the Commission, and 3) CD turnbacks/conversions along with a related D-1 rate adjustment.

Copies of the filing were served upon Northern's jurisdictional customers, state regulatory commissions and parties of record to the proceedings in the above docket.

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 §§385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5242 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-66-000]

Pacific Interstate Offshore Co.: Change in Rate

March 4, 1988

Take notice that on February 29, 1988, Pacific Interstate Offshore Company ("PIOC") tendered for filing a Cost and Revenue Study and Rate Redetermination for natural gas service rendered to its sole jurisdictional customer, Southern California Gas Company, pursuant to Rate Schedule G-10, FERC Gas Tariff Original Volume No. 1. To implement this notice of change, PIOC tendered for filing and acceptance Seventh Revised Tariff Sheet No. 4 superseding Sixth Revised Tariff Sheet No. 4.

PIOC states that based upon the test period cost of service, PIOC projects a decrease of 10.6% amounting to \$382,176 in annual revenue requirements. PIOC states that the change is due to a decline

in an imbedded cost of debt, a requested decrease in rate of return on equity and a change in gas deliverability due to a decline in reserves. PIOC does not propose any other change in its rates.

PIOC has requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to implement the notice of change effective April 1, 1988.

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 §§ 385.214 and 385.211. All such motions or protests should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-5249 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-38-000]

Ringwood Gathering Co.; Filing of Revised Tariff Sheets

March 4, 1988.

Take notice that on February 29, 1988, Ringwood Gathering Company tendered for filing Forty-Third Revised Sheet PGA-1 as part of its FERC Gas Tariff, Original Volume No. 1. Ringwood Gathering Company states that Forty-Third Revised Sheet PGA-1 with a proposed effective date of April 1, 1988, is being filed to revise its Base Tariff Rate to reflect a change in the system cost of purchased gas and the balance accumulated in its unrecovered purchased gas cost account.

Ringwood Gathering Company further states that the projected cost of purchased gas, as computed in said filing, is based on the applicable NGPA rates that will be paid during the effective period of this PGA. In certain instances, Ringwood has renegotiated the price to be paid for certain gas at costs below the maximum lawful NGPA rates. In these cases the renegotiated prices have been used.

Ringwood Gathering Company states that copies of this filing were served upon Williams Natural Gas Company, Oklahoma Natural Gas Company and interested state commissions.

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 sections 214 and 211 of the Commission's Rules of Practice, on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants a party 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. 88-5250 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 29, 1988, Southern Natural Gas Company (Southern) tendered for filing a proposed change to its FERC Gas Tariff, Sixth Revised Volume No. 1 to become effective April 1, 1988. Such filing is pursuant to Section 17 (Purchased Gas Adjustment) of the General Terms and Conditions of Southern's FERC Gas Tariff. Southern states that the proposed change reflects a net decrease in Southern's commodity rates of 65.81¢ per Mcf, including a decrease in the Current Adjustment of 53.50¢ per Mcf, a decrease in the Surcharge Adjustment of 12.30¢ per Mcf based on a three-year amortization of Southern's deferred gas costs projected through March 31, 1988, and a decrease of .006¢ per Mcf in the DCC Surcharge Adjustment.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest on or before March 11, 1988 with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests 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. 88-5243 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-004]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 29, 1988, Southern Natural Gas Company (Southern) tendered for filing First Revised Sheet Nos. 4C, 4D, 4E, 4F, 4G and 4H to its FERC Gas Tariff, Sixth Revised Volume No. 1, with proposed effective dates of April 1, 1988. Southern states that the proposed tariff sheets reflects reduced transportation rates applicable on an interim basis to services performed by Southern pursuant to Section 311 of the NGPA pending final Commission decision in Docket Nos. RP86-63-000, RP86-114-000 and RP88-17-000. The reduced rates track a reduction in Southern's underlying cost of service which is being made by Southern effective April 1, 1988, pursuant to a proposed Stipulation and Agreement in Docket Nos. RP86-63-000 and RP86-114-000. Southern has specifically requested authorization to implement the reduced rates in advance of Commission action on the Stipulation and Agreement.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions, all shippers on behalf of whom Southern is transporting gas under Section 311 of the NGPA and upon all parties to Docket Nos. RP86-63-000, RP86-114-000 and RP88-17-000.

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, on or before March 11, 1988, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or 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. 88-5244 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-63-009 and RP86-114-004]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1988.

Take notice that on February 29, 1988, Southern Natural Gas Company (Southern) tendered for filing certain revised sheets to its FERC Gas Tariff with proposed effective dates of April 1, 1988. Southern states that the revised tariff sheets, which are being filed pursuant to a Stipulation and Agreement of the same date in Docket Nos. RP86-63-000 and RP86-114-000, reflect interim rate reductions of approximately \$115 million annually in those proceedings pending the Commission's final decision in such proceedings. Southern has specifically requested authorization to implement the settlement rates in advance of the approval of the proposed Stipulation and Agreement by the Commission.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions, all shippers on behalf of whom Southern is transporting under Section 311 of the NGPA and upon all parties to Nos. RP86-63-000, RP86-114-000 and RP88-17-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest on or before March 11, 1988 with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests 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. 88-5245 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-3-41-000]

Southwest Gas Corp., Change in Rates Pursuant to Purchased Gas Cost Adjustment Provision and Elimination of Incremental Pricing Provision

(March 4, 1988).

Take notice that Southwest Gas Corporation (Southwest) on February 29,

1988, tendered for filing Thirty-eighth Revised Sheet No. 10 pursuant to Section 9. Purchased Gas Adjustment Provision (PGA), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect an increase in rates occasioned by an increase in rates from Northwest Pipeline Corporation (Northwest), Southwest's sole supplier of gas in northern Nevada, proposed to become effective April 1, 1988. Southwest has requested that its filing become effective April 1, 1988, concurrent with Northwest's proposed rate increase.

Southwest also tendered for filing, as a part of its PGA filing, the following tariff sheets to eliminate the incremental pricing provision from Southwest's tariff pursuant to FERC Order No. 478 issued July 27, 1987, in Docket No. RM79-21-000:

Sixth Revised Sheet No. 27
Fifth Revised Sheet No. 28
Third Revised Sheet No. 29
Fourth Revised Sheet No. 30
First Revised Sheet No. 30A
Second Revised Sheet No. 30B
Eighth Revised Sheet No. 31
Fifth Revised Sheet No. 32
Third Revised Sheet No. 33

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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, 385.214). All such motions or protest should be filed on or before March 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5246 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-131-001 and CP87-132-001]

Tennessee Gas Pipeline Co.; Ocean State Power Project Availability of Draft Environmental Impact Statement and Announcement of a Public Meeting to Receive Comments

March 4, 1988.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC), in cooperation with the State of Rhode Island Office of Intergovernmental Relations (OIR), has made available a draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, and a related proposal to construct a 500 megawatt power plant in northwestern Rhode Island.

The DEIS was prepared under the direction of the FERC and OIR staffs to satisfy the requirements of the National Environmental Policy Act and the Rhode Island Energy Facility Siting Act. The staff has determined that approval of the proposed project, with appropriate mitigating measures including receipt of all necessary permits and approvals, would have limited adverse environmental impact. The DEIS evaluates alternatives to the proposals.

The proposed action involves construction and operation of a new natural gas-fired, combined-cycle power plant which would be located on a 40.6-acre parcel in the town of Burrillville, Rhode Island. The proposal includes construction of a 10-mile pipeline to transport process and cooling water to the plant from the Blackstone River, and a 7.5-mile pipeline to deliver No. 2 fuel oil to the site for emergency use when natural gas may not be available.

The natural gas pipeline facilities covered in the DEIS include a total of 25.5 miles of 30-inch diameter looping in 5 separate segments located adjacent to existing gas transmission pipelines in New York and Massachusetts and approximately 11 miles of new 20-inch-diameter pipeline in Massachusetts and Rhode Island. The DEIS includes analysis of an additional 7,700 horsepower of compression at 3 existing compressor stations in New York and Massachusetts and a new 4,500 horsepower compressor station in New York.

A public meeting will be held on April 14, 1988, at 7:30 p.m. in the Council Chambers, Woonsocket City Hall, 169 Main Street, Woonsocket, Rhode Island. The purpose of this meeting is to receive comments for the record on the staff's analysis. Anyone who would like to make an oral presentation at this

meeting should promptly contact the project manager identified below to have their names placed on the speakers list. A second speakers list will be made available for sign-up at the public meeting. A transcript will be made of the meeting and oral comments.

Written comments are also welcome. All written comments on specific environmental issues should contain supporting documentation and rationale, and must be filed on or before April 25, 1988, reference Docket No. CP87-132-001, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the written comments should also be sent to the project manager identified below.

The DEIS has been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. A 45-day comment period is being provided for review and receipt of comments on the DEIS. Any person may file a motion to intervene on the basis of the staff's DEIS [18 CFR 380.10(a)(1)]. After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will be published by the staff and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and the OIR, and is available for public inspection in the FERC's Division of Public Information Room 1000, 825 North Capitol Street NE., Washington, DC 20426, and at the OIR, 275 Westminster Mall, Providence, Rhode Island 02903.

Additional copies of the DEIS, in limited quantities, are available from the FERC's Division of Public Information or from Mr. Lonnie Lister, Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street NE., Washington, DC 20426, telephone (202) 357-8874 or FTS 357-8874.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5248 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-115-003]

Williston Basin Interstate Pipeline Co.; Tariff Change

March 4, 1988.

Take notice that on February 29, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200,

304 East Rosser Avenue, Bismarck, North Dakota 58501, submitted the following tariff sheets for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A and Original Volume No. 2, to be effective as proposed.

First Revised Volume No. 1

Substitute First Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 2
Second Revised Sheet No. 5
Second Substitute Fifth Revised Sheet No. 10
Substitute First Revised Sheet No. 25
Substitute First Revised Sheet No. 26
Second Substitute Second Revised Sheet No. 27
Substitute First Revised Sheet No. 28
Substitute Original Sheet No. 28A
Substitute Original Sheet No. 28B
Substitute First Revised Sheet No. 29
Second Substitute Second Revised Sheet No. 36
Second Substitute Original Sheet No. 36A
Substitute Original Sheet No. 36B
Substitute First Revised Sheet No. 37
Second Substitute First Revised Sheet No. 45
Second Substitute Second Revised Sheet No. 46
Second Substitute First Revised Sheet No. 47
Substitute First Revised Sheet No. 55
Second Substitute First Revised Sheet No. 56
Substitute First Revised Sheet No. 90
Substitute First Revised Sheet No. 91
Substitute First Revised Sheet No. 97
Substitute First Revised Sheet No. 111
Substitute First Revised Sheet No. 113
First Revised Sheet No. 156
First Revised Sheet No. 157
First Revised Sheet No. 158
First Revised Sheet No. 159
Original Sheet No. 159A
Second Substitute First Revised Sheet Nos. 160-164

Original Volume No. 1-A

Substitute First Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 2
Second Revised Sheet No. 5
Second Substitute Third Revised Sheet No. 11
Second Substitute Fifth Revised Sheet No. 12
Substitute First Revised Sheet No. 97A
Substitute First Revised Sheet No. 127
Substitute First Revised Sheet No. 144

Original Volume No. 2

Substitute Second Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 1A
Third Revised Sheet No. 2

Second Substitute Eighth Revised Sheet No. 10
Second Substitute Ninth Revised Sheet No. 11
Second Substitute First Revised Sheet No. 11A
Second Substitute Second Revised Sheet No. 11B
First Revised Sheet No. 75
First Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 83
First Revised Sheet No. 84
First Revised Sheet No. 85
First Revised Sheet No. 86
First Revised Sheet No. 87
First Revised Sheet No. 88
First Revised Sheet No. 89
First Revised Sheet No. 90
First Revised Sheet No. 91
First Revised Sheet No. 92
First Revised Sheet Nos. 93-99
First Revised Sheet Nos. 115-136
First Revised Sheet Nos. 244-252

Williston Basin states that the revised sheets reflect receipt of authority in Docket Nos. CP86-430-000, *et al.* to abandon sales services to Colorado Interstate Gas Company and MIGC, Inc. under Rate Schedules X-5 and X-6, respectively. These revisions are to be effective May 2, 1986.

Williston Basin has also revised the tariff sheets filed in Docket No. RP87-115-000 as necessary to cancel Rate Schedule X-10 covering grandfathered transportation service for Wyoming Gas Company under section 311 of the Natural Gas Policy Act of 1978 pursuant to the Commission's Regulations at 18 CFR 284.105(a). This cancellation is to be effective October 9, 1987.

Williston Basin states that it has not reflected reinstatement of Rate Schedule I-1 in accordance with its understanding that abandonment authority has been granted in Docket No. CP88-1-000 pursuant to Commission action at its February 24, 1988 Agenda Session. Williston Basin requested any necessary waivers necessary for acceptance of the revised tariff sheets pending receipt of a final Commission Order in Docket No. CP88-1-000.

Williston Basin states that subsequent to the filing of the general rate case, on January 15, 1988, Williston Basin's tariff sheets implementing Annual Charge Adjustment Provisions were accepted as being in satisfactory compliance with the Office of Pipeline and Producer Regulation blanket order issued September 29, 1987 in Docket Nos.

RP87-109, *et al.* and the Commission's December 10, 1987 order in Docket Nos. RP87-92-001 and RM87-3-000, *et al.* By order issued December 30, 1987, in Docket No. RP87-71-000, *et al.*, Williston Basin's tariffs implementing the Commission-approved revision to the Gas Research Institute funding unit were accepted for filing. The Company states that these changes have been incorporated into the revised gas tariff sheets.

Williston Basin states that the substitute tariff sheets reflect the changes in cost of gas accepted by Commission Orders dated February 3, 1988 in Docket No. TA87-4-49-004 and October 29, 1987 in Docket No. TA88-1-49-000, pursuant to Williston Basin's Purchased Gas Cost Adjustment Provision.

Pursuant to § 375.307(j) of the Commission's Regulations, Williston Basin requests waiver pursuant to section 4(d) of the Natural Gas Act and Commission's Regulations thereunder, so that the attached tariff sheets may become effective on May 2, 1986, as proposed herein.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before March 11, 1988, 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 Rule 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will 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. 88-5247 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-245-000, *et al.*]

Natural Gas Certificate Filings; Florida Gas Transmission Company *et al.*,

March 3, 1988.

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

1. Florida Gas Transmission Company

[Docket Nos. CP88-245-000]

Take notice that on February 19, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas

77251-1188, filed in Docket No. CP88-245-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport gas for Exxon Company, U.S.A., a Division of Exxon Corporation (Exxon), all as more fully described in the application.

Specifically, FGT states that Exxon and FGT have entered into an Interruptible Transportation Agreement dated December 4, 1987, which provides for the receipt of gas by FGT for the account of Exxon of up to 50,000 MMBtu per day, and for the redelivery of equivalent volumes for Exxon's account, less Exxon's pro rata share of any gas vented or lost for any reason from that portion of FGT's facilities being utilized for Exxon at the time of such loss, and less Exxon's pro rata share of the total compressor fuel utilized by FGT in rendering all transportation services. FGT states that the gas will be received at the following existing points of interconnection between FGT and other entities:

- (1) Existing point of interconnection between FGT and United Gas Pipe Line Company (United) in St. Helena Parish, Louisiana.
- (2) Existing point of interconnection between FGT and United in St. Landry Parish, Louisiana.
- (3) Existing point of interconnection between FGT and Southern Natural Gas Company in Washington Parish, Louisiana.
- (4) Existing point of interconnection between FGT and the facilities of the Matagorda Offshore Pipeline System in Refugio County, Texas.
- (5) Existing point of interconnection between FGT and Exxon's plant in Pearl River County, Mississippi.
- (6) Existing point of interconnection between FGT and Prosper Energy Corporation's facilities in Pearl River County, Mississippi.
- (7) Existing point of interconnection between FGT and the facilities of the Big Escambia Creek Plant operated by Exxon in Escambia County, Alabama.
- (8) Existing point of interconnection between FGT and the facilities of the Jay Gas Processing Plant operated by Exxon in Santa Rosa County, Florida.

FGT proposes to deliver the gas to or for the account of Exxon, less Exxon's pro rata share of compressor fuel and vented and lost gas, at the following locations:

- (1) Existing point of interconnection between FGT and Five Flags Pipeline Company in Santa Rosa County, Florida.
- (2) Existing point of interconnection between FGT and Columbia Gulf Transmission Company in St. Landry Parish, Florida.

Inasmuch as all the above-described points of receipt and delivery are in existence, FGT states that it is not requesting authorization to construct any new facilities.

FGT proposes to charge Exxon the Maximum Rate applicable to this service. The Maximum Rate currently consists of a Facility Charge of 7.3 cents per MMBtu delivered and a Service Charge of 3.9 cents per MMBtu per 100 miles of forward haul. These charges are in addition to FGT's currently effective Gas Research Institute surcharge of 1.47 cents per MMBtu and FGT's ACA surcharge of 0.21 cent per MMBtu which became effective on October 1, 1987.

FGT states that the term of the transportation agreement is for a primary term of fifteen years from the date of initial deliveries under the contract, and from year to year thereafter.

FGT states that Exxon requires this transportation service in order to sell gas to markets served directly or indirectly by Five Flags Pipeline Company and Columbia Gulf Transmission Company.

FGT states that since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein cannot have an adverse impact on FGT's existing customers.

Comment date: March 24, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Mountain Fuel Resources, Inc.

[Docket No. CP88-239-000]

Take notice that on February 18, 1988, Mountain Fuel Resources, Inc. (MFR) 79 South State Street, Salt Lake City, Utah, 84111, filed in Docket No. CP88-239-000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate approximately 77 miles of 20-inch pipeline and appurtenant facilities to connect MFR's Storage Main Line No. 58 (S.M.L. No. 58), located on its northern transmission system, with its southern transmission system near MFR's Fidler Compressor Station (Fidler Station), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MFR requests authority to construct and operate the proposed 77-mile, 20-inch diameter pipeline, which would extend from an interconnection with MFR's S.M.L. No. 58 in Daggett County, Utah, to MFR's Fidler Station located in Uintah County, Utah, in order to connect its northern and southern transmission

systems. MFR estimates that the cost to construct and operate its proposed north/south pipeline is \$18,962,000.

It is explained that historically, MFR has depended upon Northwest Pipeline Corporation (Northwest) to (1) transport gas from an interconnection with MFR's southern system at the Red Wash exchange point in Uintah County, Utah to its northern system and (2) deliver purchased gas to the southern system at Red Wash. MFR asserts that the proposed pipeline would eliminate the dependence on and the cost of third-party transportation, thus improving MFR's ability to (1) dependably meet the contractual commitments to its producer-suppliers as well as to its sales and transportation customers in a manner that will maximize quality of service and minimize costs, (2) reliably respond to both gas supply shortfalls and excess deliverability conditions on its southern system, (3) improve systemwide operational flexibility and control in order to withstand dramatic changes in the mix of sales and transportation gas being moved throughout its system and, therefore, more successfully balance systemwide receipts and deliveries, and (4) accommodate requests for transportation service under MFR's open-access program which was conditionally authorized in Docket No. RP86-87-000, pursuant to Section 311 of the Natural Gas Policy Act of 1978.

Comment date: March 24, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-5300 Filed 3-9-88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Procedures for Monitoring Bank Protection Act Compliance.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for the review and approval of the information collection system identified above.

Address: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John R. Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before April 11, 1988.

For Further Information Contact: Requests for a copy of the submission should be sent to John R. Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

Summary: The FDIC is requesting OMB approval to continue the collection of information proposed on insured nonmember banks as a result of subpart A to regulation 12 CFR 326, *Minimum Security Devices and Procedures for Insured Nonmember Banks*. The information collected by and retained at banks is used by FDIC bank examiners to assure that banks comply with 12 CFR Part 326, which implements the provisions of the Bank Protection Act of 1968, and to review bank security programs. The collection of information currently does not have an OMB control number assigned to it as required by the Paperwork Reduction Act.

The aggregate annual paperwork burden on insured nonmember banks as a result of subpart A to 12 CFR Part 326 is 4,350 hours.

Dated: March 4, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-5261 Filed 3-9-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-811-DR]

Commonwealth of the Northern Mariana Islands; Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA-811-DR), dated January 20, 1988, and related determinations.

DATED: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. Roy Kite of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Robert J. Adamcik as

Federal Coordinating Officer for this disaster.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 88-5240 Filed 3-9-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-149]

Power of Receiver and Conduct of Receiverships; Repurchase Agreements

Date: March 7, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is supplementing Board Resolution No. 84-572 to clarify its position concerning the protections afforded to those dealing with insured savings and loan associations in "repos" of government and mortgage backed securities. With particular reference to American Savings and Loan Association, Stockton, California ("American") which has engaged in a substantial volume of such "repo" transactions, the Board wishes to make it clear that the protections given to securities dealers and others in the "repo" market by amendments to the Bankruptcy Code would also be afforded to securities dealers and others engaged in repo transactions with American.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; JoAnne Morris, Attorney, (202) 377-7396; or Michael Phillips, Attorney, Office of General Counsel, (202) 377-6755; Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, the Federal Home Loan Bank Board ("Board") has considered the particular importance of Repos (as defined below) in providing liquidity and funding for American Savings and Loan Association, a California chartered institution ("American"), the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Repos that could arise as a result of a receivership, conservatorship, or similar

proceeding with respect to American, which disruption could have additional negative effects on the cost of the funding and liquidity of Repo Assets (as defined below) for other FSLIC insured institutions and institutions chartered by the Board; and

Whereas, The Board as operating head of the FSLIC has decided, pursuant to its powers under Section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and Section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, Therefore, the Board resolves as follows

1. The Board commits that it shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to American shall be conducted solely by the FSLIC (and not the California Commissioner of Savings and Loans) as receiver, conservator or similar official (the "Receiver") under federal law and regulations, Board Resolution No. 84-572, and these resolutions.

2. The Receiver will perform all of American's obligations under Repos outstanding at the time of its appointment according to their then existing terms and conditions (including payment and margin maintenance terms) and will perform all obligations under any New Repos (as defined below) in accordance with their terms and conditions.

3. The Board and the Receiver shall use their best efforts to cause the Federal Home Loan Mortgage Corporation and/or the Federal Home Loan Banks to make necessary purchases from, or loans to, the Receiver, so as to enable the Receiver to perform the obligations assumed or incurred under Repos and New Repos to the extent necessary to maintain an orderly market in Repo Assets.

4. The Receiver shall have the power to renew, extend, to modify any Repo, and to enter into new Repos (collectively, "New Repos"), but may only exercise such power with the consent of the Repo counterparty.

5. In any termination of the receivership of American or disposition of American's liabilities under any Repo or New Repo, the Board and the Receiver shall provide for the performance of obligations and the exercise of remedies under Repos and New Repos in a manner consistent with Board Resolution No. 84-572 and these resolutions.

6. Notwithstanding any other provision of law, regulation, or these

resolutions, if the Receiver does not perform all such obligations in accordance with their terms, the counterparty to such Repos or New Repos shall have the absolute right to exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets).

7. In the event of a Cross-Default (as defined below), a counterparty to a Repo or New Repo shall have the absolute right to accelerate the repurchase and other obligations thereunder (without notice to the Receiver) and exercise all of its rights and remedies with respect to such Repos and New Repos (including liquidation of Repo Assets to satisfy such accelerated obligations).

8. The failure or delay of a counterparty to exercise any of its rights or remedies upon a failure to perform or a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

9. In connection with a Repo or New Repo counterparty's exercise of remedies upon a failure to perform or a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer instructions) against the Repo Assets or any holder or transferee thereof in connection therewith.

10. The Receiver may enforce its claim to any excess received by a counterparty upon the exercise of such remedies over the stated repurchase price (including interest to the date of liquidation of the Repo Assets) and reasonable expenses of liquidation; provided, however, that nothing herein shall be construed to limit any set-off rights that such counterparty shall have against any such excess.

11. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Repo Assets or funds made in connection with any Repo or New Repo or the liquidation thereof as a preferential transfer or fraudulent conveyance (other than any fraudulent conveyance made by American, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; provided, however, any transferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect of such transfer, in each case to the extent that such transferee gave value to American in exchange for such transfer; and provided, further, that

in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Repo Assets).

12. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a counterparty (but not Repo Assets) based on such counterparty's fraud or failure to liquidate a Repo or a New Repo in a commercially reasonable manner. In light of the substantial volume of American's Repos, the Board and the FSLIC hereby confirm that liquidation of Repo Assets over a period, not in excess of 90 days from the date of termination of a Repo or New Repo, would constitute a liquidation of a Repo or New Repo in a commercially reasonable time, and that the counterparty shall be entitled (but in the case of a Repo only from the proceeds of liquidation of Repo Assets or by way of set-off) to interest, at the contract rate, accruing during such period; provided, however, that a liquidation of Repo Assets at any point during such period or after a longer period of time shall not in and of itself constitute a commercially unreasonable time.

13. In connection with any Repos or New Repos, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by counterparties to Repos or New Repos with the FSLIC right of notice and purchase (12 CFR 563.8-2) and the contractual language required thereby, if applicable to any Repo Assets.

14. Nothing herein shall limit the exercise by a counterparty to a Repo or New Repo of its rights and remedies thereunder in reliance on the Board's Resolution No. 84-572, which Resolution shall continue in full force and effect; provided, however, that paragraphs 2, 3, 5, 6, 7, 8, 9, 11, and 13, the proviso to paragraph 10, and the second sentence of paragraph 12 of these resolutions shall not apply to a termination of a Repo prior to the stated repurchase or maturity date therefor based solely on the appointment of the Receiver for American.

15. In recognition of the reliance counterparties to Repos and New Repos place and will place on Resolution No. 84-572 and these resolutions in continuing to renew and enter into Repos with American, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by Resolution No. 84-572 and these resolutions, and will not amend or rescind them without appropriate public notice of at least 45 days, and any such amendment or rescission shall operate only prospectively.

"Cross-Default" means, as to any counterparty to a Repo or New Repo, (a) the failure by American or the Receiver to make any payment of funds or delivery of additional Repo Assets to any other Repo or New Repo counterparty when due, (b) the failure by American or the Receiver to make any payment of funds or delivery of securities under any "securities contract" or "commodities contract" (each as defined in the federal Bankruptcy Code), or interest rate exchange agreement, when due, or (c) such counterparty is unable to finance or sell under repo, on reasonable terms and conditions, any Repo Assets (whether due to market insecurity, a breach by the Board of its commitments hereunder, or otherwise).

"Repo Assets" means assets that are "liquid assets" under 12 CFR 523.10 or assets that would be so "liquid" but for their remaining term to maturity, "mortgage-related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), whole loan mortgages, and interests therein.

"Repo" means an agreement, whether documented as a purchase and sale transaction or a secured loan transaction, by American (or the Receiver, in the case of New Repos) pursuant to which American or the Receiver transfers Repo Assets to a counterparty that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortgage Corporation, or (to the extent that Repo Assets are securities that are direct obligations of or that are fully guaranteed as to principal and interest by the United States or any agency thereof, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association) a Federal Home Loan Bank, against the transfer of funds with a simultaneous agreement by the counterparty to retransfer such Repo Assets to American or the Receiver on a date certain or on demand against the transfer of funds.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary to the Board shall forward this resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board,
John F. Ghizzoni,

Assistant Secretary.
[FR Doc. 5358 Filed 3-9-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007540-049.

Title: United States Atlantic and Gulf/Southeastern Caribbean Conference.

Parties:

Puerto Rico Maritime Shipping Authority
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago Ltd.

Synopsis: The proposed amendment would permit the parties to establish and publish rates on excepted commodities. It would prohibit independent action ("IA") with respect to rates on excepted commodities and would provide for IA with respect to the level of compensation paid to an ocean freight forwarder who is also a customs broker. It would also permit the parties to enter into service contracts on excepted commodities on a group basis only (individual service contracts are prohibited), and would restate the agreement.

Agreement No.: 232-010885-001.

Title: The EAC Lines Transpacific Service, Ltd., Mitsui O.S.K. Lines, Ltd. and Kawasaki Kisen Kaisha Space Charter and Sailing Agreement in the Far East-U.S. Pacific Coast Trades.

Parties:

The EAC Lines Transpacific Service, Ltd.
Mitsui O.S.K. Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed amendment would permit any party to withdraw from the agreement with immediate effectiveness by giving appropriate written notice.

Agreement No.: 217-011176.

Title: Ozean-Linie GmbH/n.v. CMB s.a. dba Deppe Line Space Charter Agreement

Parties:

Ozean Linie GmbH ("Ozean")
n.v. CMB s.a. ("CMB")

Synopsis: The proposed agreement would permit Ozean to charter space to CMB in the trade between ports in Northern Europe and U.S. Gulf and Florida ports and San Juan, Puerto Rico.

Agreement No.: 217-011177.

Title: Euro-Gulf International, Inc./Ozean Linie GmbH Space Charter Agreement.

Parties:

Euro-Gulf International, Inc.
Ozean Linie GmbH

Synopsis: The proposed agreement would permit the parties to charter space from one another in the trade between U.S. Gulf and Florida ports and Northern European ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: March 7, 1988.

[FR Doc. 88-5294 Filed 3-9-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting of Tuberculosis Elimination Advisory Committee

ACTION: Notice of Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET)

Time and Date: 8:00 a.m.-4:30 p.m.—April 7, 1988, 8:00 a.m.-12:30 p.m.—April 8, 1988.

Place: The Emory Room, Stafford-Emory Inn, 1644 Clifton Road, NE., Atlanta, Georgia 30329.

Status: Open.

Purpose: This Committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and

their subsequent application, and reviews progress toward elimination.

Matters to be Discussed: The Committee will finalize the Strategic Plan for Elimination of Tuberculosis in the United States. The committee will also review the statement on TB Control in Correctional Institutions and the statement on Tuberculosis and HIV Infection. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDC, 1600 Clifton Road, NE., Mailstop E-10, Atlanta, Georgia 30333, Telephones: FTS: 236-2501; Commercial: 404/639-2501.

Dated: March 4, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-5236 Filed 3-9-88; 8:45 am]

BILLING CODE 4160-18-M.

Food and Drug Administration

[Docket No. 87N-0270]

Studies for Developing Procedures to Evaluate the Safety of Bound Drug Residues; Availability of Grants (Cooperative Agreements); Request for Applications

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing the availability of approximately \$300,000 for Fiscal Year 1988 for cooperative agreements to support studies for developing procedures to evaluate the safety of drug residues that are bound to tissues of food-producing animals. This notice amends a prior request for applications that was published in the Federal Register of October 21, 1987 (52 FR 39281), to allow additional time for submission of applications. All interested parties are advised to consult the notice of October 21, 1987, for additional information on the proposed research program.

DATES: Applications must be received by 5 p.m., May 31, 1988. The earliest date for award is September 30, 1988.

ADDRESSES: Applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170. Note: Applications hand-

carried or commercially delivered should be addressed to the Park Bldg., Rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857. The outside of the mailing package and the top of the application face page should be labeled "Response to RFA-FDA-CVM-88-2."

FOR FURTHER INFORMATION CONTACT:

For further information regarding requests for application (RFA) forms or the administrative and financial management aspects of this notice contact: Barbara Moy, State Contracts and Assistance Agreement Branch (HFA-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

For further information regarding the programmatic aspects of this notice contact: David B. Batson, Center for Veterinary Medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6510.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95-224. FDA's research program is described in the catalog of Federal Domestic Assistance No. 13.103.

The purpose of the cooperative agreements is to provide financial assistance to support research on new models, procedures, or combinations of models and procedures that can contribute to a general approach to evaluating the safety of bound drug residues. FDA anticipates making up to three awards. Support for this program may be for a period of up to 3 years.

Dated: March 4, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-5238 Filed 3-9-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), Federal Register, Vol. 46, No. 223, pp. 56911-56934, dated Thursday, November 19, 1981) is amended to reflect a reorganization of the Provider Reimbursement Review Board.

The specific changes to Part F. are described below:

• Section F.20.A. Provider Reimbursement Review Board (FA-1) is amended to reflect the establishment of an organizational substructure within the Board. The functions and responsibilities remain the same. The section now reads as follows:

A. Provider Reimbursement Review Board (FA-1).

The Provider Reimbursement Review Board (Board), after determining that it has jurisdiction, conducts hearings to resolve disputes on cost reimbursement and prospective payment submitted by Medicare providers under section 1878 of the Social Security Act. Upon the completion of these hearings, the Board renders impartial decisions on these appeals. This is the initial step in the judicial review process.

1. Hearings and Decisions Staff (FA-11).

The Hearings and Decisions Staff is responsible for facilitating and supporting hearings and for preparing the final Provider Reimbursement Review Board decisions after the conclusion of hearings.

2. Jurisdiction and Case Management Staff is responsible for determining if the Provider Reimbursement Review Board (Board) has jurisdiction for appeals filed under section 1878 of the Social Security Act. Upon determining that the Board has jurisdiction, this Staff will be responsible for the management of the case until it is ready for hearing or the case is withdrawn or dismissed prior to hearing.

William L. Roper,

Administrator.

Date: February 22, 1988.

[FR Doc. 88-5258 Filed 3-9-88; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

National Advisory Council on Nurse Training; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1988:

Name: National Advisory Council on Nurse Training.

Date and Time: May 10-11, 1988, 9:00 a.m.

Place: The Potomac Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on May 10, 9:00 a.m.-12:30 p.m.

Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99-92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting with announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on May 10, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, and Special Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443-6193.

Agenda Items are subject to change as priorities dictate.

Date: March 4, 1988.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.

[FR Doc. 88-5233 Filed 3-9-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-08-4220-11; I-18106]

Partial Termination of Recreation and Public Purpose Classification; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification Termination.

SUMMARY: This order partially terminates a Bureau of Land Management classification affecting 5 acres of public land near Bliss, Idaho. After termination of the classification, the underlying lands will immediately

become available for disposal through a pending public sale action.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Idaho State Office, 3380 Americana Terrace, Boise Idaho 83706, 208-334-1471.

By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purposes Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4; it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7-1(b)(1) and the authority delegated to me by BLM Manual Section 1203 (48 F.R. 85), the classification decision of February 25, 1982, which classified 200 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, under serial number I-18106, is hereby revoked insofar as it affects the following-described lands:

Boise Meridian, Idaho

T. 6 S., R. 12 E.

Sec. 1, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described contains 5.00 acres in Gooding County.

2. Upon termination of the classification, the underlying lands will immediately become available for disposal through a pending public sale action under section 203 of the Federal Land Policy and Management Act of 1976.

Dated: March 1, 1988.

Martin J. Zimmer,

Acting State Director.

[FR Doc. 88-5217 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-GG-M

[NV-03-08-4830-02-24-10]

Meeting of Carson City District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Carson City District Advisory Council.

DATE: May 4, 1988.

ADDRESS: 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

SUMMARY: The Council will meet at 9:30 a.m. The agenda will include minutes of the last meeting, an overview of the District's involvement with the Steamboat Geothermal and Geyser Area and comments from the public (11:00 a.m.). A field trip of the Steamboat area will follow in the afternoon. Anyone may attend the meeting and field trip, but must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Brian Hatoff, BLM Public Affairs Officer, 1535 Hot Springs Road, Suite 300, Carson City, NV, (702) 882-1631. James W. Elliott, District Manager.

[FR Doc. 88-5232 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-08-4322-02]

Craig, CO; Advisory Council Meeting

Time and Date: June 8, 1988, at 8:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Matters To Be Considered

1. PRLAs and how BLM determines wildlife potential and other impacts.
2. CITF.
3. More effective use of the Council.
4. Wilderness Study Areas.
5. Field trip to Sand Wash to observe race reclamation.

CONTACT PERSON FOR MORE

INFORMATION: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

William J. Pulford,
District Manager.

[FR Doc. 88-5289 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-JB-M

[MT-020-08-4410-02]

Montana; Miles District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Miles City District Advisory Council will be held Thursday, April 14, 1988, at 8 a.m. in the conference room at the Miles City District Office, Garryowen Road, West of Miles City, Montana. The agenda is as follows:

1. Approve minutes of last meeting
2. Election of Chairperson and Vice Chairperson for 1988
3. Long term goals and objectives for Miles City District—DAC input
4. Selected program updates
5. New Business
6. Opportunity for public comment
7. Adjourn

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written

statements for the Council's consideration. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Date: March 4, 1988.

Mat Millenbach,
District Manager.

[FR Doc. 88-5279 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-DN-M

Susanville District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on April 21, 1988.

The meeting will begin at 10:00 a.m. at the Surprise Resource Area Office, of the Bureau of Land Management, 602 Cressler Street, Cedarville, California.

The agenda on April 21, will include a discussion and recommendation on the use of 8100 funds, for fiscal year 1989, a report on the progress of range improvement work for fiscal year 1988, an update on the Wild Horse and Burro Program, an update on the Buffalo Hills Deer Winter Range TRT, an update on the Alturas Integrated Resource Management Plan, an update on the High Rock situation, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the board between 3:00 p.m. and 4:30 p.m. on April 21, 1988, or file a written statement for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California, 96130, by April 15, 1988. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 88-5277 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-40-M

[WY-010-08-4333-12]

Limited Motor Vehicle Use Designation; Washakie Resource Area, WY

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Change in off-road vehicle designation WY-010-8105.

SUMMARY: On January 1, 1982, the "Pits Motorcycle Use Area" east of Worland, Wyoming, was formally designated and motor vehicle use at the area was limited to motorcycles and snowmobiles. The Wyoming BLM ORV designation identified for the area is WY-010-8105. It has since been determined that it is necessary to discourage public use of the area because of the increasing concentrations of hydrogen sulfide gas (H_2S) nearby. As secondary oil recovery methods (water flooding) have become more prevalent near "The Pits", hydrogen sulfide gas accumulations have been increasing. In addition, flowlines carrying H_2S gas are present near the site. Inhalation of this gas could be fatal and is especially hazardous to uninformed casual users. As part of the process to reduce public contact with this hazard, the special designation on the "Pits Motorcycle Use Area" is rescinded and the area is redesignated "limited to existing roads and trails", as of the date of this notice. All motorized vehicle use on public lands administered by the Bureau of Land Management in "The Pits Motorcycle Use Area" is restricted to existing roads and trails. Information on the availability of other public lands suitable for motorcycle use is available by contacting the Bureau of Land Management, Worland District Office.

DATE: This designation becomes effective upon publication in the Federal Register and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of this designation is available for inspection at the Worland District Office.

ADDRESSES: Bureau of Land Management, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: Darrell C. Barnes, District Manager, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, (307) 347-9871

SUPPLEMENTARY INFORMATION: The limited use designation applies to the following public lands:

Sixth Principal Meridian, Wyoming
Washakie County

Generally, public rangelands located approximately 5 miles east of Worland, Wyoming, along the old alignment of U.S. Highway 16, known locally as the Pits, totalling about 125 acres.

Specifically the following:

T. 47 N., R. 92 W.,

Sec. 25: Portions of $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$,
 $W\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$
 $NE\frac{1}{4}NW\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$,
 $S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$.

Sec. 26: Portions of $SE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$,
 $E\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}W\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$.

The limited use designation applies to all motorized vehicles, including but not limited to: automobiles, trucks, four-wheel drive or low-pressure-tire vehicles, tracked or amphibious machines, ground-effect or air-cushion vehicles, recreation campers, motorcycles, snowmobiles and any other means of transportation deriving motive power from any source other than muscle. Under the limitation, exceptions are made for (1) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, or any combat or combat support vehicle when used for national defense purposes, (2) any vehicle whose use is expressly authorized by the Bureau of Land Management under permit, lease, license, or contract, and (3) any government vehicle on official business.

A map showing the new limited use area, and additional information about the designation are available for review at the Bureau of Land Management, Worland District Office.

Darrell C. Barnes,
District Manager.

[FR Doc. 88-5293 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-08-4220-11; GP-08-085; OR-26358]

Conveyance of Public Land; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 653.24 acres of public land out of Federal ownership. This action will also open 640 acres of reconveyed land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 653.24 acres of land in Lake County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 28 S., R. 24 E.,
sec. 22, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and
S $\frac{1}{2}$ SW $\frac{1}{4}$;
sec. 27, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and
SE $\frac{1}{4}$.

The area described contains 640 acres in Harney County.

3. At 8:30 a.m., on April 18, 1988, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on April 18, 1988, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on April 18, 1988, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on April 18, 1988, the land described in paragraph 2 will be

open to applications and offers under the mineral leasing laws.

B. LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

Dated: March 3, 1988.

[FR Doc. 88-5274 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-08-4212-13; A-23221]

Realty Action; Exchange of Public Lands, Maricopa County, AZ

The following described federal lands are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 2 W.,
Sec. 25, Lots 4, 6, 8 and 10;
Sec. 26, Lot 2.
Comprising 97.44 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, including the mining laws, subject to valid existing rights, but not the mineral leasing laws or from exchange pursuant to Federal Land Policy and Management Act of 1976.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Date: March 3, 1988.

Henri R. Bisson,
District Manager.

[FR Doc. 88-5219 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-010-08-4212-13; CA 20755]

Realty Action; Termination of Proposed Exchange of Public Lands in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Termination of Proposed Exchange of Public Lands (CA 20755).

SUMMARY: This Notice is to advise the public that the proposed exchange of public lands (CA 20755) is terminated. The lands proposed for exchange are described as follows:

Mount Diablo Meridian, CA

T. 17N., R. 9E.,
Sec. 20, S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 29, Lots 3, 4, 5, 6 and 7, NW $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.
Containing 487.99 acres, more or less.

SUPPLEMENTARY INFORMATION: The publication of a Notice of Realty Action in the **Federal Register** on April 16, 1987, Vol. 52, No. 73 pages 12469-12470, proposed the exchange of public lands in Nevada County, California. The Notice segregated the public lands from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The proposed exchange has been terminated and the segregation of the land no longer serves a purpose.

At 10:00 A.M., April 11, 1988, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 A.M. on April 11, 1988 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10:00 A.M., April 11, 1988, the land will be open to mineral location under the United States mining laws. The land has been and continues to be open to application and offers under the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Michael G. Kelley, Realty Specialist, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985-4474.

Date: March 1, 1988.

Nancy Cotner,
Associate District Manager.
[FR Doc. 88-5292 Filed 3-9-88; 8:45 am]
BILLING CODE 4310-10-M

[CA-010-08-4212-13; CA 20180]

Realty Action; Termination of Proposed Exchange of Public Lands in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Termination of Proposed Exchange of Public Lands (CA 20180).

SUMMARY: This Notice is to advise the public that the proposed exchange of

public lands (CA 20180) is terminated. The lands proposed for exchange are described as follows:

Mount Diablo Meridian, CA

T. 6S., R. 5E.,

Sec. 7, Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18, E1/2SE1/4.

Containing 498.05 acres, more or less.

SUPPLEMENTARY INFORMATION: The publication of a Notice of Realty Action in the *Federal Register* on July 15, 1987, Vol. 52, No. 135, page 26574, proposed the exchange of public lands in Stanislaus and Santa Clara Counties, California. The Notice segregated the public lands from settlement, location and entry under the public land laws and the mining laws. The proposed exchange has been terminated and the segregation of the land no longer serves a purpose. Upon publication of this Notice the segregation imposed by this proposed exchange (CA 20180) will be terminated. The land is currently segregated by another exchange (CA 20645) and the status of the land, insofar as its availability for appropriation under the general land laws, will not be changed.

FOR FURTHER INFORMATION CONTACT:

Michael G. Kelley, Realty Specialist, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630; (916) 985-4474.

Date: March 1, 1988.

Nancy Cotner,

Associate District Manager.

[FR Doc. 88-5291 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-10-M

[CO-010-08-4212-13; C-44263]

Exchange of Lands in Jackson County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Kremmling Resource Area has identified the following described lands in Jackson County as suitable for disposal by exchange.

Disposal Parcel:

6th Principal Meridian, Jackson County, Colorado

T. 8N., R. 80W.,

Sec. 6, Lot 3;

Sec. 7, Lots 2, 3, NE1/4NW1/4.

T. 8N., R. 81W.,

Sec. 2, SE1/4SE1/4;

Sec. 12, SE1/4NE1/4, NE1/4SE1/4.

T. 9N., R. 80W.,

Sec. 28, SW1/4SW1/4;

Sec. 31, S1/2SE1/4;

Sec. 32, W1/2W1/2NE1/4, SW1/4NW1/4, SW1/4SW1/4.

Containing 511.42 acres more or less.

In exchange for these lands, the United States will acquire the following described lands in Jackson County from David W. Farrand, owner of Double "R" Ranch.

Offered Land:

6th Principal Meridian, Jackson County, Colorado

T. 8N., R. 80W.,

Sec. 2, Lots 1-4, S1/2N1/2, S1/2.

Containing 638.72 acres of non-federal lands, more or less.

FOR FURTHER INFORMATION AND PUBLIC COMMENT:

Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Kremmling Resources Area Office at 1116 Park Avenue, Kremmling, Colorado.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig Colorado 81625. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to facilitate improved resource management and to dispose of scattered, difficult to manage public land parcels while consolidating ownership of other public lands.

The values of lands to be exchanged are approximately equal: full equalization of value will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25 percent of the value of the land being transferred out of federal ownership.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All mineral resources and related rights shall be reserved to the United States together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. All valid existing rights and reservations of record including the following: Powerline and telephone rights-of-way C-9596, C-8482, C-12349,

C-22720. Access road rights-of-way C-36379 and C-45787. Oil and Gas leases C-38030, C-31050, C-31051 and C-42941.

4. A reservation for Jackson County roads numbered 12W and 18 pursuant to section 8 of the Act of July 26, 1866, 14 Stat. 253 and Rev. Stat. 2477, codified at 43 U.S.C. 932 (1970 and 1979).

5. Grazing Permits 1727, 1736 and 1777—unless waived.

Publication of this notice in the *Federal Register* segregates the public lands from operation of the public land laws and the mining law, except for mineral leasing. The segregated effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

William Pulford,

District Manager.

[FR Doc. 88-5253 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-JB-M

[(NM-030-08-4212-12; NM NM 67560)]

Exchange of Public Land for State Land in Dona Ana County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Surface and Mineral Estates

T. 22 S., R. 3 E., NMPM

Sec. 20, SE1/4, NE1/4SW1/4, S1/2SW1/4;

Sec. 29, All;

Sec. 32, All.

T. 23 S., R. 3 E., NMPM

Sec. 5, All.

Containing 2,200 acres, more or less.

Mineral Estate

T. 22 S., R. 2 E., NMPM

Sec. 23, S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4,

S1/2N1/2NW1/4SW1/4, S1/2NW1/4SW1/4,

SW1/4SW1/4, SE1/4;

Sec. 24, S1/2;

Sec. 25, NE1/4, S1/2;

Sec. 26, W1/2NE1/4, NW1/4, S1/2;

Sec. 27, E1/2;

Sec. 34, E1/2;

Sec. 35, All.

T. 22 S., R. 3 E., NMPM

Sec. 17, SW1/4, SW1/4NE1/4SE1/4, W1/2SE1/4,

SE1/4SE1/4;

Sec. 18, Lots 3, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16,

17, 18, 19, E1/2SW1/4, SE1/4;

Sec. 20, N1/2, NW1/4SW1/4;

Sec. 30, Lots 1, 2, 3, 4, E1/2, E1/2W1/2;

Sec. 31, Lots 1, 2, 3, 4, E1/2, E1/2W1/2.

T. 23 S., R. 2 E., NMPM

Sec. 1, Lots 1, 2, 3, 4, S1/2N1/2, S1/2.

T. 23 S., R. 3 E., NMPM

Sec. 6, Lots 1, 2, 3, 4, 5, 6, 7, S1/2NE1/4,

SE1/4NW1/4, E1/2SW1/4, SE1/4.

Containing 6,859.50 acres, more or less.

In exchange for the above lands, the United States proposes to acquire the following lands from the State of New Mexico:

Surface and Mineral Estates

- T. 20 S., R. 3 W., NMPM
 Sec. 16, All;
 Sec. 20, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 29, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 30, Lot 4;
 Sec. 32, All;
 Sec. 34, SW $\frac{1}{4}$ SW $\frac{1}{4}$.
- T. 20 S., R. 4 W., NMPM
 Sec. 1, Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 10, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$,
 SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 11, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$,
 N $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 12, SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 13, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 14, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 15, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$,
 S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 22, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 23, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 25, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 26, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$,
 SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 27, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 36, All.
- T. 21 S., R. 1 W., NMPM
 Sec. 36, Lots 1, 2, 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$,
 W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$.
- T. 21 S., R. 3 W., NMPM
 Sec. 25, S $\frac{1}{2}$.
- T. 22 S., R. 1 W., NMPM
 Sec. 2, Tract 42 (Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$).
- T. 22 S., R. 3 E., NMPM
 Sec. 23, W $\frac{1}{2}$ W $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$.
- T. 23 S., R. 1 W., NMPM
 Sec. 2, Tract 37 (Lots 1, 2, 3, 4, 5, 6,
 S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$).
- T. 24 S., R. 4 W., NMPM
 Sec. 32, All.
- T. 25 S., R. 2 W., NMPM
 Sec. 26, W $\frac{1}{2}$.
- T. 25 S., R. 3 W., NMPM
 Sec. 32, All.
- T. 25 S., R. 4 W., NMPM
 Sec. 36, All.
- T. 25 S., R. 3 E., NMPM
 Sec. 36, All.
- T. 26 S., R. 1 W., NMPM
 Sec. 16, All.
- T. 26 S., R. 2 W., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 16, All;
 Sec. 27, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 28, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 30, NE $\frac{1}{4}$;
 Sec. 32, All.
- T. 26 S., R. 3 W., NMPM
 Sec. 15, NE $\frac{1}{4}$;
 Sec. 16, All;
 Sec. 26, NW $\frac{1}{4}$;
 Sec. 32, All;
 Sec. 36, All.
- T. 26 S., R. 4 W., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 16, All;
 Sec. 32, All;
 Sec. 36, All.

- T. 26 S., R. 4 E., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 16, All;
 Sec. 32, All;
 Sec. 36, All.
- T. 27 S., R. 4 W., NMPM
 Sec. 1, S $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 16, All;
 Sec. 32, All;
 Sec. 36, All.
- T. 28 S., R. 3 W., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 16, NW $\frac{1}{4}$, S $\frac{1}{2}$;
 Sec. 32, All;
 Sec. 36, All.
- T. 28 S., R. 4 W., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 16, All;
 Sec. 32, All;
 Sec. 36, All.
- T. 29 S., R. 4 W., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Containing 29,256.53 acres, more or less

Mineral Estate

- T. 20 S., R. 4 W., NMPM
 Sec. 34, NW $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 22 S., R. 3 E., NMPM
 Sec. 14, W $\frac{1}{2}$;
 Sec. 36, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$,
 W $\frac{1}{2}$ SE $\frac{1}{4}$.
- T. 23 S., R. 3 E., NMPM
 Sec. 2, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, S $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 13, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 24, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 25, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 26, Lots 7, 8, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 36, All.
- T. 24 S., R. 3 E., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
 Sec. 11, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 12, N $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 14, N $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 34, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 36, All.
- T. 25 S., R. 3 E., NMPM
 Sec. 2, Lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$.
- T. 25 S., R. 2 W., NMPM
 Sec. 36, All.
- T. 26 S., R. 1 W., NMPM
 Sec. 32, All.
- T. 26 S., R. 2 W., NMPM
 Sec. 36, All.
- T. 27 S., R. 2 W., NMPM
 Sec. 16, All;
 Sec. 32, All.
- T. 28 S., R. 3 W., NMPM
 Sec. 16, NE $\frac{1}{4}$.
- T. 29 S., R. 3 W., NMPM
 Sec. 2, All.
- Containing 9,555.01 acres, more or less.

DATES: Comments must be submitted on or before April 30, 1988.

ADDRESSES: Comments should be sent to Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at 505-525-8228, (FTS 571-8350).

SUPPLEMENTARY INFORMATION: The land to be transferred will be subject to:

1. Reservations to the United States for ditches and canals, constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. The New Mexico State Land Office shall honor the present grazing use and improvements authorized by BLM on the selected land until the grazing permits expire, then the State Land Office will negotiate with the BLM permittee utilizing their rules and regulations for determining rental rates, term and type of lease, and authorization of improvements.

3. The BLM shall honor the present grazing use and improvements authorized by the State Land Office on the offered land until the grazing leases expire, then the BLM will allocate the grazing use and authorize the improvements under 43 CFR 4100.

The purpose of this exchange is to implement the following decisions in the Southern Rio Grande Plan Amendment (1986): (1) To consolidate and reunite the Federal surface and subsurface estates in and adjacent to the BLM's Wilderness Study Areas, Organ Mountains Recreation Lands, and areas that have high riparian wildlife habitat and cultural values; and (2) consolidate and reunite the State's surface and subsurface estates. Publication of this Notice will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Robert R. Calkins,
 Associate District Manager.
 March 1, 1988.

[FR Doc. 88-5220 Filed 3-9-88; 8:45 am]
 BILLING CODE 4310-FB-M

[OR-120-08-4212-13: GP 8-060 or 41529]

Exchange of Public Lands in Douglas County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described public domain lands located in Douglas County, Oregon, have been examined and through the development of land use planning decisions based on public input and resource considerations, regulation, and Bureau policies, it has been determined that this public land is suitable for disposal by exchange under the authority of Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

Township 21 South, Range 09 West,
Lots 1, 2, 8, 16 Section 2
Lots 21, 22, 23, 24, 25, 26, 27 Section 4
NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10
Containing 387.12 acres.

If additional acreage is needed to equalize exchange values the following lands will be included:

Township 21 South, Range 11 West,
SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, containing 40 acres
Township 23 South, Range 08 West,
NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 22, containing 40 acres

All mineral rights will be transferred with the surface estate. The patent, if issued, will be subject to a reservation of right-of-way thereon for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945), and a reservation of existing roads constructed by the United States (OR 6956, OR 13336 and OR 2918)

In exchange for these lands the United States will acquire the following described lands from International Paper Company:

Willamette Meridian, Oregon

Township 19 South, Range 09 West,
Lots 5, 6, 7, 8, 10, 11, 12 Section 24,
containing 280.82 acres
Township 21 South, Range 07 West,
Lots 1, 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section
30, containing 147.75 acres

The purpose of this exchange is to facilitate the resource management programs of the Bureau of Land Management and to improve the timber management program of the Company. The Company intends to manage the acquired federal lands with its existing timber lands for timber production. The Company lands that will be exchanged will be managed by the Bureau under the principles of multiple use management along with the surrounding public lands.

The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making the exchange.

The lands described above will be exchanged in conjunction with a larger exchange between the U.S. Department

of Agriculture, Forest Service and International Paper Company. The fair market value of the lands involved in the combined exchange is being determined by an appraisal. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the combined public lands to be transferred out of Federal ownership, or acreages will be adjusted accordingly.

Publication of this notice in the **Federal Register** segregates the public lands, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effective of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange, including the environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 333 South 4th Street, Coos Bay, OR 97420.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Coos Bay District Manager at the above address (Reference exchange number OR 41529). Objections will be evaluated by the Oregon State Director of the Bureau of Land Management who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:
Thom Green, Coos Bay District Office
(503) 269-5880.

Dated: February 22, 1988.

Melvin E. Chase,

District Manager.

[FR Doc. 88-5221 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-07-4520-12; C-1-88]

Filing of Plat of Survey; California

March 3, 1988.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County
T. 7 S., R. 7 E.

2. This supplemental plat of the SW $\frac{1}{4}$ of section 2, Township 7 South, Range 7 East, San Bernardino Meridian, California, was accepted February 25, 1988.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Indian Affairs, Sacramento Area Office.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Dated: March 4, 1988.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 88-5222 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-08-4520-12]

Colorado: Filing of Plats of Survey

March 2, 1988.

The plats of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., March 2, 1988.

The plat representing the dependent resurvey of the east boundary, T. 38 N., R. 2 E., New Mexico Principal Meridian, Colorado, Group No. 812, was accepted February 24, 1988.

The plat representing the corrective survey of the north $\frac{1}{2}$ mile of the north and south center line of section 28, T. 36 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group No. 871, was accepted February 24, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-5273 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-08-4220-10; C-47115]

Proposed Withdrawal and Opportunity for Public Meeting; Colorado

March 2, 1988.

AGENCY: Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 30 acres of public land near Granby, Colorado, to protect an administrative site. This notice closes the land to operation of the public land laws including location and entry under the mining laws for 2 years. The land will remain open to mineral leasing. The withdrawal is requested for 20 years.

DATE: Comments and requests for meeting should be received on or before June 8, 1988.

ADDRESS: Comments and meeting requests should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303-236-1768.

SUPPLEMENTARY INFORMATION: The Department of Agriculture filed application on February 22, 1988, to withdraw the following described public land from settlement, sale, location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Sixth Principal Meridian

T. 1 N., R. 76 W.,

Sec. 8, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described aggregates 30 acres in Grand County.

The purpose of the proposed withdrawal is for protection of a planned administrative site to support management of National Forest System land in the nearby Arapaho National Forest.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the Colorado State Director.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director

within 90 days of the date of publication of this notice. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisdiction over the land and will not authorize any use of the land by the Department of Agriculture.

Richard D. Tate,

Acting Chief, Branch of Adjudication.

[FR Doc. 88-5278 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-80-4220-11; C-2486]

Continuation of Withdrawal; Colorado

March 1, 1988.

AGENCY: Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew National Forest System lands for an indefinite period of time for various recreation areas and campgrounds be modified and definite time periods established. This notice proposes that the withdrawal order be modified and the 69.6 acres of recreation areas and campgrounds be continued for 20 years and the 2,720 acres in the Mount Werner Sports Area be continued for 50 years. The lands will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before June 8, 1988.

ADDRESS: Comments should be addressed to State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, BLM Colorado State Office, (303) 236-1768.

1. The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order No. 5107, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to Section 204 of the

Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

Sixth Principal Meridian

Routt National Forest

Hidden Lakes Campground

T. 6 N., R. 82 W.,

Sec. 9, S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

Hahn's Peak Reservoir Recreation Area Addition

T. 10 N., R. 82 W.,

Sec. 11, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Freeman Reservoir Recreation Area

T. 9 N., R. 89 W.,

Sec. 6, lot 18, and north 5 chains of lot 21.

The areas described aggregate approximately 69.6 acres in Jackson, Moffat, and Routt Counties.

2. The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order No. 5107, as amended, for an indefinite period of time, be modified to expire in 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

Mount Werner Winter Sports Area

T. 6 N., R. 83 W.,

unsurveyed—in approximately secs. 29 and 32, beginning at the northeast section corner of sec. 36, T. 6 N., R. 84 W., thence east 10 chains, north 40 chains, east 20 chains, north 20 chains, east 20 chains, north 30 chains, west 30 chains, north 30 chains, west 20 chains at which point is the east $\frac{1}{4}$ corner of sec. 24, T. 6 N., R. 84 W., thence south 120 chains along the range line to the point of beginning.

T. 6 N., R. 84 W.,

Sec. 23, 24, and 25;

Sec. 26, N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;Sec. 36, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described aggregates approximately 2,720 acres in Routt County.

The purpose of this withdrawal is for the administration and protection of various recreation areas and campgrounds. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake

such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88-5218 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Marathon Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Marathon Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1449, Blocks 57 (portion), 79 (portion), and 80 (portion), Lease OCS-G 1874, Blocks 79 (portion) and 80 (portion), and Lease OCS-G 1989, Block 80, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 4, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 4, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-5270 Filed 3-9-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Micro Enterprise; Establishment

AGENCY: Agency for International Development, IDCA.

ACTION: Notice of Establishment—Advisory Committee on Micro Enterprise.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Agency for International Development (A.I.D.) announces the establishment of the Advisory Committee on Micro Enterprise.

The purpose of the committee is to advise A.I.D. on guidelines and related matters for A.I.D.'s micro-enterprise development programs. A.I.D. has determined that establishment of the committee is necessary and in the public interest.

Jan W. Miller,

Assistant General Counsel for Employee and Public Affairs.

Date: March 4, 1988.

[FR Doc. 88-5215 Filed 3-9-88; 8:45 am]

BILLING CODE 6116-01-M

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on March 31–April 1, 1988 at the Department of State, 2201 C Street NW., Washington, DC, Room 1107. The Committee will discuss A.I.D.'s future linkages and relationships in science and technology with advanced developing countries that no longer receive development assistance from the United States.

The meeting will begin at 9:00 a.m. on both days and adjourn at 5:30 p.m. on March 31 and 1:00 p.m. on April 1. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Jackson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235-8929.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

Dated: February 29, 1988.

[FR Doc. 88-5214 Filed 3-9-88; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension

Bureau/Office: Office of Compliance & Consumer Assistance

Title of Form: Request for Revocation of Authority Granted

OMB Form No.: 3120-0104

Agency Form No.: OCCA-46

Frequency: On Occasion

Respondents: Transportation entities voluntarily applying for revocation of their operating rights.

No. of Respondents: 550

Total Burdens Hrs.: 275

Brief Description of the need and proposed use: The Purpose of the form is to allow regulated transportation

entities to apply voluntarily for revocation of their operating rights, or any part thereof. It is needed to support a recommendation to revoke such authority.

Noreta R. McGee,
Secretary.

FR Doc. 88-5199 Filed 3-9-88; 8:45 am]

BILLING CODE 7035-01-M

Motor, Water, Broker, and Freight Forwarder Proceedings; Public Inquiries; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Notice of contacts for public inquiries on the status of motor, water, broker, and freight forwarder proceedings: Correction of Telephone Number.

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"). Notice of this change appeared in the *Federal Register* at 53 FR 7056 (March 4, 1988).

Inadvertently, the wrong telephone numbers were published. 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) 275-7022 or 275-7023. 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. 88-5315 Filed 3-9-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31236]

Chicago South Shore and South Bend Railroad; Trackage Rights; Illinois Central Gulf Railroad Co.; Exemption

The Illinois Central Gulf Railroad Company has agreed to grant overhead trackage rights to the Chicago South

Shore and South Bend Railroad between South Joliet, IL (milepost (AO)39.0) and Kensington Station in Chicago, IL (near milepost 14), a distance of approximately 53 miles, for freight traffic only. The trackage rights became effective on February 26, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 29, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

FR Doc. 88-4839 Filed 3-9-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Charleston Properties, et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *Charleston Properties and WSJ Properties v. United States of America and United States of America v. Charleston Properties and WSJ Properties*, No. C-87-20502 WAI (N.D. Cal.), and *United States of America v. Juana Salado*, No. C-87-20503 (N.D. Cal.), was lodged with the United States District Court for the Northern District of California, San Jose Division, on March 5, 1988.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as well as the Rivers and Harbors Act, 33 U.S.C. 403, as a result of the discharge of fill material onto portions of property located in Mountain View, California, which are alleged to constitute "waters of the United States." The consent decree requires Charleston Properties and/or WSJ Properties to pay \$65,000 to an entity selected by the United States, which entity shall spend the funds for wetlands acquisition, creation, restoration, and/or enhancement. The consent decree allows Charleston Properties and/or WSJ Properties to proceed to complete the development that was halted by a cease-and-desist

order issued by the Corps of Engineers on October 9, 1985.

The Department of Justice will receive until March 18, 1988, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Attention: Letitia Grishaw, 450 Mission Street, Suite 408, San Francisco, California 94105 and should refer to *Charleston Properties v. United States*, DJ Reference No. 90-5-1-6-413.

The consent decree may be examined at the Clerk's Office, United States District Court, 4050 U.S. Courthouse, 280 S. First Street, San Jose, CA 95113.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5227 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action to Enjoin Discharge of Water Pollutants; Salem, NJ

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. City of Salem*, Civil Action No. 87-1601, was lodged with the United States District Court for the District of New Jersey on February 29, 1988. The consent decree establishes a compliance schedule for the New Jersey wastewater treatment plant owned and operated by the City of Salem to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable regulations relating to the discharge of pollutants and requires payment of a civil penalty of \$10,000. The Decree also establishes a sewer ban until termination of the Decree.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. City of Salem*, D.J. Ref. No. 90-5-1-1-2759.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, 502 Federal Building, 970 Broad Street, Newark, NJ 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please

enclose a check in the amount of \$1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5225 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree; Stanley Plating Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 1, 1988, a proposed Consent Decree in *United States v. Stanley Plating Company, Inc.*, Civil Action Number H-86-343 AHN, was lodged with the United States District Court for the District of Connecticut. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act of 1976, as amended. Defendant Stanley Plating Company owns and operates an electroplating facility in Forestville, Connecticut which generated and disposed of hazardous wastes. Defendant violated the Resource Conservation and Recovery Act and the regulations passed thereunder by, *inter alia*, operating without a final permit to treat, store or dispose of hazardous wastes, failing to close its land disposal units in accordance with an appropriate closure plan, failing to establish a financial mechanism to assure proper closure, and failing to demonstrate financial responsibility for sudden and non-sudden accidental occurrences resulting in environmental impairment.

The Consent Decree provides that the defendant shall pay a civil penalty of \$230,000.00 and be subject to continuing obligations with respect to compliance with various hazardous waste regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Stanley Plating Company, Inc.*, D.J. No. 90-7-1-331.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 250, Federal Building, 450 Main Street, Hartford, Connecticut 06103, at the Region I office of the Environmental Protection Agency, Office of Regional Counsel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, and at the

Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States v. Stanley Plating Company, Inc.*, D.J. No. 90-7-1-331, and include a check for \$2.00 (10 cents per page reproduction charge) payable to the United States Treasury.

Thomas E. Hookano,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-5226 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 9-88]

Privacy Act of 1974; Modified System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of Justice, United States Parole Commission, proposes to modify its system of records entitled "Inmate and Supervision Files, Justice/PRC-003" which was last published on December 11, 1987 (52 FR 47283) by adding new routine uses identified as "(m)," "(n)," "(o)," "(p)," and "(q)."

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses. You may submit any comments in writing to J. Michael Clark, Assistant Director, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 6402, 601, D Street NW., Washington, DC 20530. All comments must be received by April 11, 1988.

The modified system description is reprinted below.

Dated: February 25, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/PRC 003

SYSTEM NAME:

Inmate and Supervision Files.

SYSTEM LOCATION:

Records are maintained at each of the U.S. Parole Commission's (USPC) Regional Offices for inmates incarcerated in and persons under supervision in each region. Records are housed temporarily at the Commission's Headquarters Office located at 5550

Friendship Blvd., Chevy Chase, Md. 20815 when used by the National Appeals Board or other Headquarters personnel. A duplicate records of certain data elements from files is maintained on microfiche for Headquarters use. Prior to the first parole hearing, the inmate's file is maintained at the institution at which he is incarcerated. Certain records on parolees and mandatory releases are maintained at probation offices. All requests for records should be made to the appropriate regional office at the following addresses: U.S. Parole Commission, Customs House Seventh Floor, Second and Chestnut Streets, Philadelphia, Pa. 19106. U.S. Parole Commission, 1718 Peachtree St. NW, Suite 250, Atlanta, GA 30309. U.S. Parole Commission, Air World Center, Suite 220, 10920 Ambassador Drive, Kansas City, Mo. 64153. U.S. Parole Commission, 525 Griffin St., Suite 820, Dallas, Tex. 75202. U.S. Parole Commission, 1301 Shoreway Road, 4th Floor, Belmont, CA 94002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former inmates under the custody of the Attorney General. Former inmates include those presently under supervision as parolees or mandatory releasees.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Compilation of sentence and supportive documentation.
2. Correspondence concerning pending charges, and wanted status, including warrants.
3. Requests from other Federal and non-Federal law enforcement agencies for notification prior to release.
4. Records of the allowance forfeiture, withholding and restoration of good time.
5. Information concerning present offense, prior criminal background sentence, and parole from the U.S. Attorneys, the Federal Courts, and Federal prosecuting agencies.
6. Identification data.
7. Order of designation of institution or original commitment.
8. Records and reports of work and housing assignments.
9. Program selection assignments and performance adjustments/progress reports.
10. Conduct records.
11. Social background.
12. Educational data.
13. Physical and mental health data.
14. Parole Commission applications, appeal documentation, orders actions, examiner's summaries, transcripts or

tapes of hearings, guideline evaluation documents, parole or mandatory release certificates, statements or third parties for or against parole, special reports on youthful offenders and adults required by statute and related documents.

15. Correspondence regarding release planning, adjustment and violations.

16. Transfer orders.

17. Mail and visit records.

18. Personal property records.

19. Safety reports and rules.

20. Release processing forms and certificates.

21. Interviews requests forms from inmates.

22. General correspondence.

23. Copies of inmate court petitions and other court documents.

24. Report of probation officers. Commission correspondence with former inmates and others, and Commission order and memoranda dealing with supervision and conditions of parole or mandatory release.

25. If an alleged parole violation exists, correspondence requesting a revocation warrant, warrant application, warrant, instructions as to service, detainers and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 4201-4218, 5005-5041, 28 CFR Part 0, Subpart V, and 28 CFR Part 2.

PURPOSE(S):

The system constitutes the agency's records upon which it bases all its decisions with respect to every stage of parole consideration from initial hearing to termination of parole supervision. For example, it is used by USPC hearing examiners to perform a *prehearing* review and to conduct the inmate's initial parole hearing. After that hearing, it is maintained in the appropriate regional office where it provides the principal information source for all decisions leading to parole or denial of parole, and all decisions following release to supervision. It is used at USPC headquarters when appeals come before the National Appeals Board or when needed by legal counsel and others on the headquarters staff. It is used by employees at all levels, including USPC members, to provide information for decisionmaking in every area of USPC responsibility. Files of released inmates are used to make statistical studies of subjects related to parole and revocation. Finally, the file is maintained to provide the rationale of USPC actions when an agency determination is questioned by members of the public or challenged in judicial proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(a) The system may be used as a source for disclosure of information which is solely a matter of public record and which is traditionally released by the agency to further public understanding of its criminal justice system, including but not limited to offense, sentence data, and prospective release date.

(b) The system may be used to provide an informational source for responding to inquiries from Federal inmates, their families, representatives, and Congressional offices.

(c) Record from the system of records may be routinely disclosed to U.S. Probation Officers for the performance of their official duties.

(d) In the event that the USPC is informed of a violation or suspected violation of law whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order, issued pursuant thereto.

(e) Records from this system may be disclosed to a Federal, State or local agency or court if that agency or court requests information for an official purpose to which the documents appear to be relevant.

(f) A record from this system may be disclosed to a person or to persons who may be exposed to harm through contact with a particular parolee or mandatory releasee (or to persons in a position to prevent or minimize such harm), if it is deemed to be necessary to give notice that such danger exists.

(g) Lists of names of parolees and mandatory releasees entering a jurisdiction and related information may be disclosed to law enforcement agencies upon request as may be required for the protection of the public for the enforcement of parole conditions.

(h) Disclosure of USPC notices of action may be made (1) by the Office of Public Affairs of the U.S. Department of Justice to the public generally, and (2) by USPC to specific crime victims and witnesses (as those terms are used in the Victim and Witness Protection Act of 1982), from the files of prisoners whose applications for parole have been decided by USPC. The purpose of such disclosure is to further understanding of

the criminal justice system by the public and by crime victims and witnesses.

(i) Incidental disclosure of file material may be made during the course of a parole or parole revocation hearing to victims and witnesses of crime and other legitimately interested persons authorized by USPC to attend such hearing, so as to further their understanding of the case to permit their intelligent comment with respect to USPC's decision.

(j) Records which are arguably relevant to litigation in which the Parole Commission has an interest, or to the litigation defense of its present or former employees (if the Department of Justice has agreed to provide representation) may be disclosed from a current or former inmate's or parolee's file by disseminating in proceeding before a court or tribunal at any time deemed appropriate by the Government's attorney.

(k) A record from this system of records may be disclosed to a current or former criminal justice official who is a defendant in a lawsuit brought by, or which involves, an individual who is the subject of a file maintained in this system of records, provided that such litigation arises from allegations of misconduct on the part of the defendant while a criminal justice official, and that the records are arguably relevant to the matter in litigation. Such records may be disclosed to the defendant to facilitate the preparation of his or her defense.

(l) Records from this system may be disclosed to any person performing any service for the USPC pursuant to authority exercised by the Chairman under 18 U.S.C. 4204(b) (1) through (8), and for the purposes contemplated by that statute.

(m) A record relating to the identification and location of Human Immunodeficiency Virus (HIV)-positive parolees (those who test positive for the Acquired Immune Deficiency Syndrome virus) may be disseminated to State or local health departments where permitted by State law.

(n) Where the Commission or supervising probation office believes that a specific person is or has been exposed to a medically recognized risk from an HIV-positive parolee and has not been advised of such risk, a record relating to the identification of that parolee may be released to the parolee's physician or State or local health authorities for the purpose of determining if the physician or health authorities are willing to provide a warning to the third-party at risk and, if willing, for the purpose of providing such a warning.

(o) A record relating to the identification of an HIV-positive parolee may be made to a third party where it is believed that such third party is or has been exposed to medically recognized type of risk from an HIV-positive parolee and has not been advised of such risk. Such disclosures under this routine use would be made only where the parolee's physician or State or local health authorities are unable or unwilling to make such a warning to the third party; such disclosures will be made discreetly and as a confidential communication.

(p) To the extent not prohibited by State law, a record relating to the identification and location of an HIV-positive parolee may be disseminated to those medical facilities, State or local health departments, community organizations or similar groups capable of providing medical help or counseling to HIV-positive parolees.

(q) A record relating to the identification of an HIV-positive parolee may be released to the United States Marshal when the Commission issues a parole violator warrant for the arrest of an HIV-positive parolee.

(r) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(s) Information not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(t) A record may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Manual requests records are stored in locked safes. Automated requests records are stored on disks.

RETRIEVABILITY:

Requests reports are filed and retrieved under the names of those persons and individuals identified under the caption "Categories of individuals covered by the system." These records are retrieved by Department personnel

to perform their duties, e.g., when subsequent requests are made by the public for copies of their previous requests and responses thereto, or when the requester submits a supplemental request to information clarifying a previous request.

SAFEGUARDS:

Access to requests records is limited to Department of Justice personnel who have need for the records to perform their duties. Request files (manual records) are stored in locked safes. All records are stored in an office which is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

Records are held at the regional office until termination of sentence then transferred to the Washington National Records Center. Records are destroyed ten years after the case becomes inactive.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Officer, United States Parole Commission, 5550 Friendship Blvd., Chevy Chase, Md. 20815.

NOTIFICATION PROCEDURE:

Address inquiries to Regional Commissioner at appropriate location. For general inquiries, address system manager. The Attorney General has exempted this system from compliance with the provisions of Subsection (d) under the provisions of Subsection (j).

RECORD SOURCE CATEGORIES:

1. Individual inmate; 2. Federal law enforcement agencies and personnel; 3. State and Federal probation services; 4. Non-Federal law enforcement agencies; 5. Educational institutions; 6. Hospital or medical sources; 7. Relatives, friends and other interested individuals or groups in the community; 8. former or future employers; 9. Evaluations, observations, reports and findings of institution supervisors, counselors, boards and committees, Parole Commission examiners, Parole Commission Members; 10. Federal court records; 11. U.S. Bureau of Prisons personnel and records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d)(e) (2) and (3), (e)(4) (G) and (H), (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of U.S.C. 553 (b), (c) and

(e) and have been published in the Federal Register.

[FR Doc. 88-5223 Filed 3-9-88; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation announces that grant funds are available for improving the quality of law school civil clinical programs. The Corporation will distribute approximately twenty-two (22) one-time, non-recurring grants to geographically dispersed law schools of varying sizes. Each grant will be for a term up to 12 months. Applicants may request funding of up to \$50,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) and section (a)(3) of the Legal Services Corporation Act of 1974, as amended. Grantees are required to guarantee that a substantial portion of the funds required shall come from non-federal sources and that federally funded assets and projects will not be included in in-kind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Law schools serving (or enrolling) primarily minorities are encouraged to apply. Each applicant must submit appropriate documentation of eligibility.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before April 18, 1988. Grant awards will be announced by May 1988.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, Legal Services Corporation, Office of Field Services, Program Development and Substantive Support Division, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: In 1984, LSC initiated a nationwide research project by providing fourteen (14) law school clinics with one-time, non-recurring grants. In return for these

funds, the clinics employed clinical legal education as a means of rendering legal assistance to eligible clients. In 1985, this effort was supplemented as a result of a special Congressional appropriation that enabled LSC to fund twenty (20) law school clinics. In 1986, fifteen (15) law school clinics joined in the effort, and in 1987 twenty-six (26) law school clinics participated. To date, LSC has granted a total of seven-five (75) law school clinic grants.

Congress has recognized this necessary support of clinical education. Consequently, the Corporation is pleased to announce the fifth year of its cooperative effort with the law school clinics by continuing its annual grant competition.

In 1987, LSC completed a formal assessment of the research project and found that law school clinics offer a unique opportunity for augmenting the services provided by existing legal services programs. Competent, efficient services can be provided by involving supervised law students in the direct delivery of legal services to low-income clients. Furthermore, the students' clinical experience acquaints them with the unique needs of LSC's eligible clients in an environment that is intended to increase further reduced fee or *pro bono* involvement. Consequently, the law school clinic project meets the immediate needs of indigent person and also promotes the expansion of future delivery of legal services to eligible clients by lawyers in public service and private practice.

This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs which address the civil legal needs of poor persons. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects which provide services to underserved segments of the population (e.g., Native American, handicapped, homebound, isolated, and rural residents) or filling in the gaps in existing services and resources.

A variety of methods could be used to provide these services including but not limited to: (1) An independent, university-sponsored clinic; (2) a joint clinic in which existing faculty provide legal instruction while LSC field attorneys provide the necessary clinical supervision; (3) a law school clinic concentrating on a previously underserved, specific client population (e.g., Native American); (4) a law school

clinic concentrating totally on one field of law (e.g., Social Security Disability, SSI); and (5) a joint model in which an attorney becomes responsible for both the law education and the clinical supervision of law students.

Selection Criteria

All proposals submitted to LSC/OFS will be reviewed to insure that each is responsive to the minimum requirements set forth in this solicitation. Final selection of grantees will be made by the President of LSC in consultation with the Director of the Office of Field Services (OFS), following submission of nonbinding recommendations from an advisory committee comprised of outside private experts and LSC staff. The following criteria, which have been grouped into four basic categories, will be used to assess each proposal:

1. Effective Management/Ability to Meet Project Needs (25-35%)

(a) The provision of a clear description of clinic educational and service delivery activities intended to increase legal services to the local LSC client-eligible population, and an effective plan for management of the clinic.

(b) The provision of a budget which is adequate to support clinic educational and service delivery activities, and which cites costs that are reasonable in relation to the duration and objectives of the proposed clinic.

2. Quality Supervision and Training (20-30%)

(a) Evidence that the clinic director and key clinic staff have the necessary qualifications and experience to effectively administer the proposed clinic and will be able to allocate an adequate amount of time and resources to the clinic. This is especially so with regard to the provision of appropriate levels of student supervision by faculty members, clinic staff attorneys, LSC attorneys or private *pro bono* practitioners.

(b) Evidence that the proposed clinic provides for the high quality education and training of students in the necessary areas of the law and is equipped to deliver high quality legal services in a cost effective manner.

3. Community Cooperation (15-25%)

(a) The extent to which a cooperative effort is shown between a local legal services provider and the corresponding area's law school clinics. Letters or other evidence of support by this provider for the proposed clinic may be attached where appropriate. Law school clinic proposals which are coordinated with and supported by the local legal services provider(s) are encouraged.

In addition, it is highly recommended that the law school clinic applicants explain how proposed activities and services complement the local legal services providers' service priorities.

(b) Support and participation from the private bar which result in increased attorney participation is also encouraged by LSC and should be specifically encouraged by each applicant.

4. University Commitment (15-25%)

(a) The degree to which the institution's regular budget is currently allocated to its clinical education program, and to its clinical activities. Evidence that such budgetary support levels will be *maintained* during and beyond the term of the grant. The viability of the civil clinic beyond the term of the grant must be specifically addressed.

(b) Demonstration that the applicant plans to make an adequate in-kind contribution. In order to maximize service delivery, indirect administrative costs will not be allowed to be deducted from LSC grant funds. **Note:** Federally funded assets and projects cannot be counted as in-kind contribution.

To ensure nationwide participation and geographic distribution, OFS has created seven administrative regions to be used strictly for the purposes of this project. The boundaries of these regions were drawn based upon the need for geographic dispersion combined with the desire that each region contain a generally proportionate number of states as well as eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be selected in each of the seven regions.

The seven LSC/OFS Law School Civil Clinical Program regions containing all areas in which LSC provides legal services are listed below:

Region #1:

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Rhode Island
Vermont

Region #2:

Delaware
District of Columbia
Kentucky
Maryland
Puerto Rico
U.S. Virgin Islands
Virginia
West Virginia

Region #3:

Alabama
Arkansas
Florida
Georgia
Louisiana
Mississippi
North Carolina
South Carolina
Tennessee

Region #4:

Illinois
Indiana
Michigan
Ohio
Pennsylvania

Region #5:

Colorado
Kansas
Missouri
New Mexico
Oklahoma
Texas

Region #6:

Alaska
Idaho
Iowa
Minnesota
Montana
Nebraska
North Dakota
Oregon
South Dakota
Washington
Wisconsin
Wyoming

Region #7:

Arizona
California
Guam
Hawaii
Micronesia
Utah

John H. BAyly, Jr.,

President, Legal Services Corporation.

[FR Doc. 88-5198 Filed 3-9-88; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (88-23)]

NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee.

DATE AND TIME: March 21, 1988, 9 a.m. to 5 p.m., and March 22, 1988, 9 a.m. to 4 p.m.

ADDRESS: Greenbelt Hilton Hotel, Salon D, 6400 Ivy Lane, Greenbelt, MD 20770.

FOR FURTHER INFORMATION CONTACT:

Mr. A. V. Diaz, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee reports to the Space and Earth Science Advisory Committee (SESAC), Space Applications Advisory Committee (SAAC) and Life Sciences Advisory Committee (LSAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Office of Space Station (OSS) on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to discuss the OSSA strategic planning, Space Station Utilization planning and the Subcommittee's future activities. The group is chaired by Dr. Franklin Lemkey and is composed of 15 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

March 21, 1988

9 a.m.—Welcome, Introduction and Committee Procedures.

9:30 a.m.—Space Station Program Status.

10:30 a.m.—Office of Space Science and Applications (OSSA) Strategic Plan and Space Station Utilization.

12:30 p.m.—OSSA Integrated Requirements and Candidate Payload List for the Phase I Station.

2 p.m.—OSSA Announcements of Opportunity and Payload Selection Plans.

2:30 p.m.—OSSA Space Station Utilization Studies Status.

3:30 p.m.—Space Station Science Operations Management Concept and Science Utilization Plan.

5 p.m.—Adjourn.

March 22, 1988

9 a.m.—Small Attached Payload Working Group Status.

10 a.m.—"Quick is Beautiful" Study.

11 a.m.—Task Force on Scientific Uses of the Space Station and Overview of the International Forum on Scientific Uses of the Space Station.

1 p.m.—Development of Subcommittee Action Plan for the Year.

4 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer,
National Aeronautics and Space Administration.

March 1, 1988.

[FR Doc. 88-5210 Filed 3-9-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-24)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautics Technology Competitiveness.

DATE AND TIME: March 23, 1988, 8:30 a.m. to 4 p.m.

ADDRESS: McDonnell Douglas Corporation, Crystal Gateway, Suite 800, 1225 Jefferson Davis Highway Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Mr. John S. Burks, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2807.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Aeronautics Technology Competitiveness, chaired by Mr. Louis F. Harrington, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 10 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

March 23, 1988
 8:30 a.m.—Review Status and Discuss
 Team Actions.
 4 p.m.—Adjourn.

March 3, 1988.

Ann Bradley,

*Advisory Committee Management Officer,
 National Aeronautics and Space
 Administration.*

[FR Doc. 88-5211 Filed 3-9-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-25)]

**NASA Advisory Council (NAC),
 Aeronautics Advisory Committee
 (AAC); Meeting**

AGENCY: National Aeronautics and
 Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the
 Federal Advisory Committee Act, Pub.
 L. 92-463, as amended, the National
 Aeronautics and Space Administration
 announces a forthcoming meeting of the
 NASA Advisory Council, Aeronautics
 Advisory Committee, Ad Hoc Review
 Team on Acoustic Wind Tunnel
 Requirements.

DATE AND TIME: March 30, 1988, 8:30 a.m.
 to 4:30 p.m.; and March 31, 1988, 8:30
 a.m. to 3 p.m.

ADDRESS: National Aeronautics and
 Space Administration, Langley Research
 Center, Building 1219, Room 225,
 Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT:
 Dr. Randolph A. Graves, Office of
 Aeronautics and Space Technology,
 National Aeronautics and Space
 Administration, Washington, DC 20546,
 202/453-2828.

SUPPLEMENTARY INFORMATION: The
 NAC Aeronautics Advisory Committee
 (AAC) was established to provide
 overall guidance to the Office of
 Aeronautics and Space Technology
 (OAST) on aeronautics research and
 technology activities. Special ad hoc
 review teams are formed to address
 specific topics. The Ad Hoc Review
 Team on Acoustic Wind Tunnel
 Requirements, chaired by Mr. Dean
 Borgman, is comprised of eight
 members. The meeting will be open to
 the public up to the seating capacity of
 the room (approximately 25 persons
 including the team members and other
 participants).

Type of Meeting: Open.

Agenda

March 30, 1988

8:30 a.m.—Briefings and Discussion on
 Requirements and Capabilities.

4:30 p.m.—Adjourn.

March 31, 1988

8:30 a.m.—Drafting of Report
 Recommendations for NASA Wind
 Tunnel Usage and Modification.

3 p.m.—Adjourn.

Ann Bradley,

*Advisory Committee Management Officer,
 National Aeronautics and Space
 Administration.*

March 3, 1988.

[FR Doc. 88-5212 Filed 3-9-88; 8:45 am]

BILLING CODE 7510-01-M

**NATIONAL FOUNDATION ON THE
 ARTS AND THE HUMANITIES**

**President's Committee on the Arts and
 the Humanities; Meeting**

Thursday, March 31, 1988 at nine
 o'clock in the morning has been
 designated by the President's Committee
 on the Arts and the Humanities for
 Plenary Meeting XVII. This meeting has
 been scheduled in the Indian Treaty
 Room, Old Executive Office Building,
 adjacent to the White House,
 Pennsylvania Avenue, NW at 17th
 Street, in Washington, DC. This is a
 regularly scheduled meeting at which
 committee activities will be reviewed
 and progress reported. Because of
 security, reservations must be made by
 calling 202-682-5409 or writing the
 President's Committee and must be
 received not later than March 28 with
 appropriate security information (full
 name, social security number and date
 of birth).

The Committee, charged with
 exploring ways to increase private
 support for the arts and the humanities,
 has generated private funds to augment
 its operational costs and support
 projects and programs which have been
 initiated by the President's Committee.

Agenda items on March 31 will
 include:

Briefings by the Chairmen of the
 National Endowment for the Arts and
 the National Endowment for the
 Humanities on the highlights of their
 activities.

Reaching Rural Audiences

Joan Kent Dillon

Fund for New American Plays

Roger Stevens

Dr. Carol Rocamora, Artistic and
 Producing Director, Philadelphia
 Festival Theatre for New Plays

500 Years of American Clothing

Bill Blass

Liberal Arts and the Corporate
 Workplace Survey Summary

Dr. Frank Stanton

Dr. Michael Useem, Associate Dean,
 College of Liberal Arts Boston
 University

The Practical Value of Humanistic Study

Dr. Franklin Murphy, Retired
 Chairman, Times Mirror Company,
 Chancellor Emeritus, U.C.L.A. Dr.
 Murphy is currently Chairman of
 the National Gallery of Art and the
 Samuel Kress Foundation. He began
 his distinguished career as a
 physician and became chancellor of
 the University of Kansas.

Yvonne M. Sabine,

*Acting Director, Council and Panel
 Operations, National Endowment for the Arts.*

March 4, 1988.

[FR Doc. 88-5271 Filed 3-9-88; 8:45 am]

BILLING CODE 7537-01-M

**NUCLEAR REGULATORY
 COMMISSION**

[Docket No. 50-341]

**Detroit Edison Co.; Wolverine Power
 Supply Cooperative, Inc.;
 Consideration of Issuance of
 Amendment to Facility Operating
 License and Opportunity for Hearing**

The United States Nuclear Regulatory
 Commission (the Commission) is
 considering issuance of an amendment
 to Facility Operating License No. NPF-
 43, issued to the Detroit Edison
 Company and Wolverine Power Supply
 Cooperative, Inc. (the licensees), for
 operation of Fermi-2 located in Monroe
 County, Michigan.

In accordance with the licensees'
 application for amendment dated
 November 30, 1987, the amendment
 would revise Technical Specification 3/
 4.3.7.5, Table 3.3.7.5-1, Accident
 Monitoring Instrumentation, to require
 that a minimum of two (2) channels,
 instead of one (1) channel, be operable
 for the Standby Gas Treatment System
 (SGTS) Radiation Monitors (i.e.,
 requiring one channel per flow path to
 be operable) to ensure that appropriate
 compensatory actions are taken to
 preclude conditions which have the
 potential for allowing unmonitored
 release of noble gases. In addition, the
 proposed amendment would revise: (1)
 The associated Action Statement 81 in
 Table 3.3.7.5-1 for the SGTS Radiation
 Monitors and Containment High Range
 Radiation Monitor to extend the time
 period before the licensees are required
 to submit a Special Report to the
 Commission (pursuant to Section 6.9.2 of
 the Technical Specifications) as
 recommended in NRC Generic Letter 83-
 36; and (2) make appropriate changes in

the Technical Specification Bases for Accident Monitoring Instrumentation as a result of the change.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 11, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of

the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Martin J. Virgilio: (Petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for Detroit Edison Company.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 30, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Monroe County

Library System, 3700 S. Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 4th day of March, 1988.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Project Management, Project Directorate III-1, Division of Reactor Projects-III, IV, V & Special Projects.

[FR Doc. 88-5254 Filed 3-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-369, License No. NPF-9 and EA 87-163]

Duke Power Co. McGuire Nuclear Station Unit 1; Order Imposing Civil Monetary Penalty

I

Duke Power Company (licensee) is the holder of Operating License No. NPF-9 issued by the Nuclear Regulatory Commission (NRC/Commission) on July 8, 1981. The license authorizes the licensee to operate McGuire Nuclear Station, Unit 1 in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on August 3-7, 1987. The results of that inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 28, 1987. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 25, 1987 admitting the violations, but disputing the proposed escalation of the base civil penalty.

III

After consideration of the licensee's response and the statement of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined as set forth in the Appendix to this Order that the escalation of the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act

of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that: The licensee pay a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) within 30 days of the date of this order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region II, and a copy to the NRC Resident Inspector, McGuire Nuclear Station.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether the portion of the proposed penalty above the base civil penalty should be imposed, in whole or in part.

For the Nuclear Regulatory Commission,
James M. Taylor,
Deputy Executive Director for Regional Operations.

Dated at Bethesda, Maryland this 3rd day of March 1988.

Appendix—Evaluations and Conclusions

On October 28, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during a routine NRC inspection. Duke Power Company responded to the Notice of November 25, 1987. In its response, the licensee admitted that the subject violations occurred and did not contest the base civil penalty or the proposed Severity Level of the violations; however, the licensee did contest escalation of the base civil penalty. The NRC's evaluations and conclusions regarding the licensee's arguments are as follows:

A. General Arguments

Summary of Licensee's Response

The licensee contends that the NRC escalated the base civil penalty because of past poor performance and inadequate corrective action related to independent verification and failure to follow procedures in the area of plant operations. The licensee believes that reasons given by the NRC for escalation are either inconsistent with the factors set forth in the Enforcement Policy or are otherwise improper.

NRC Evaluation of Licensee's Response

The NRC letter of October 28, 1987, included the following statement: The base civil penalty amount was increased by 100 percent because of: (1) Past poor performance in the area of concern as documented generally by Systematic Assessment of Licensee Performance (SALP) in the operations area and specifically by the similar occurrences discussed earlier [see page 2 of the October 28, 1987 letter paragraphs 2 and 3 regarding IVP], (2) the corrective actions taken on July 29, 1987, were not only inadequate and non-conservative, in that it was assumed the problem was in the control panel indicators and not in the diesel generator itself, but untimely in that it was not recognized promptly that the indicator light was out. Specifically, multiple shift turnovers occurred during the time the diesel generator was inoperable yet, none of the licensed operators involved recognized the significance of the multiple indicators of the problem available to them.

The NRC staff's evaluation of the licensee's arguments concerning the details associated with the above summary statement will be addressed in specific below.

B. Arguments Regarding Past Performance

1. Effectiveness of Previous Corrective Action

a. Independent Verification Program (IVP)

Licensee Assertion. The licensee cites a number of efforts to improve their IVP subsequent to a March 1983 incident at Oconee in an effort to demonstrate how these previous corrective actions have been successful in minimizing future problems. In the licensee's view, this justifies removal of the escalation for prior poor performance.

NRC Evaluation. Five changes were made to the McGuire IVP prior to 1984. No subsequent changes are relied upon in the licensee's argument prior to the current incident. The licensee then cites

statistics to show a declining trend in the number of related incidents over four years from three per year to one per year.

The reason for escalation was poor performance. The NRC staff made no contention that there had been no progress in improving the IVP. Using the licensee's statistics, we note that all eight problems cited by the licensee in the IVP have occurred since full implementation of the five changes to the program. No subsequent changes were made to the IVP over a four year period preceding the current incident even though additional violations have occurred. Thus, it cannot be found that earlier changes in the IVP constituted adequate corrective action insofar as the subject violations are concerned. Therefore, escalation based on continued poor performance in IVP is appropriate.

b. Personnel Failure to Follow Procedures

Licensee Assertion. The licensee cites corrective actions and a decreasing number of Reportable Events which are argued to be indicative of a declining number of personnel errors. It is the licensee's view that such trends support removal of escalation for prior poor performance.

NRC Evaluation. It is the staff's position that the licensee's statistical trends alone are not sufficient to weigh against escalation. First, the relationship between the corrective actions cited by the licensee and the trends is not readily apparent given the dates of implementation of the corrective actions and the intervening unfavorable SALP findings. Second, statistics indicating an overall declining trend in personnel errors do not provide assurance that progress has been made in a specific area such as IVP or that recurring problems are being prevented. Finally, the occurrence of a significant problem such as the inoperability of DG-1A, which involved a number of procedural as well as cognitive personnel errors, calls into question the effectiveness of past corrective actions regardless of statistical trends. This incident underscores the need to make the determination of whether escalation is appropriate on a qualitative as well as quantitative basis.

2. Overall Performance (prior SALP reports)

Licensee Assertion. The licensee contends that recent events weigh against the NRC's reliance upon the SALPs for the purpose of escalation.

specifically the recently awarded category 2 SALP rating in Operations.

NRC Evaluation. The licensee relies heavily on the most recent SALP as evidence of improvement. The licensee assumes that the most recent category 2 SALP rating should be considered as the primary indication of previous performance for escalated enforcement.

There are several points that must be noted in this regard: (a) previous performance, for purposes of escalated enforcement, includes more than consideration of numerical SALP ratings or the fact that the previous SALP rating shows improvement, (b) despite the recent improvement in the SALP rating, the licensee's past performance in specific areas has not been good, (c) a SALP rating of 2 does not necessarily mean that a penalty may not be escalated.

3. Prior Enforcement History

Licensee Assertion. The licensee asserts that the two events discussed should not be used as a basis for escalating a civil penalty for prior enforcement history because one of the events was not cited in a Notice of Violation and because the events occurred more than two years ago [January 3 and October 22, 1985].

NRC Evaluation. The NRC is not required by the Enforcement Policy to limit in its consideration of the basis for escalation for "Past Performance" (10 CFR Part 2, Appendix C, Section V.c.3) to the licensee's prior enforcement history. (See also "Prior Notice of Similar Events" *id.* V.c.4.) Information in inspection reports, whether or not used to support a violation, is relevant for past performance and provides notice for the need for corrective action. Accordingly, the NRC's reference, in the October 28, 1987 letter, to the two events, which were noted as similar to the incident for which the instant notice was issued, was appropriate. It is further noted that the emphasis of the NRC's reference to the two events was that the corrective action for those events was not successful in preventing the current incident.

The NRC typically reviews events over an approximate two year period in evaluating past performance. In this case the Notice of Violation was issued on October 28, 1987, the inspection took place on August 3-7 1987; and the violations occurred between July 26 and 30, 1987. Therefore, consideration of the two events that occurred in 1985 is appropriate especially given the distinct similarities that exist between the recent incident and those events.

C. Arguments Regarding Corrective Actions

Licensee Assertion. The licensee contends that there are two separate reasons for objecting to the NRC's assertion that improper corrective action should serve as the basis for escalating the base civil penalty. The licensee's reasons for objecting are listed below:

1. Such use constitutes improper double counting (i.e., improper corrective action cannot serve as basis for both the violation and the escalation), and

2. Conflict with the Enforcement Policy (i.e., the licensee asserts that the policy prohibits considering actions taken before discovery of the problem as "corrective.")

NRC Evaluation. The violation for failure to take corrective actions (Violation C of the Notice of Violation) was cited because of the operator's failure to recognize the significance of the multiple indications of the problem available to him. Further, when the problem was identified, it was improperly diagnosed as a faulty switch. The basis for escalation rests on the fact that multiple shift turnovers occurred, with the diesel generator 1A (DG-1A) in fact inoperable for approximately 90 hours. Each turnover provided an opportunity to identify and correct the violation. The Enforcement Policy (10 CFR 2, Appendix C) allows for escalation based on duration of the violation. Paragraph B.V.5(3) of the Policy states that whether or not a licensee is aware or should have been aware of a violation that continues for more than a day, the civil penalty imposed for the violation may be increased to reflect the added significance resulting from the duration of the violation. The reference to corrective action in the October 28, 1987 cover letter's discussion of escalation was not intended to address the factor of inadequate corrective action but rather the duration caused by inadequate action on July 29, 1987.

In summary, the violation (Violation C of the Notice of Violation) is based on the failure of the operator to recognize the significance of the multiple indications of DG-1A inoperability, as well as the improper diagnosis of the problem, while the escalation is based on the duration of the event. It is not impermissible to issue a citation for failure to take corrective action and at the same time escalate a penalty based on the significance of that failure.

D. NRC Conclusion

The purpose of this penalty is remedial. It is designed to emphasize (1)

the need to maintain lasting corrective action and (2) that performance of the type underlying this civil penalty action cannot be accepted. The staff recognizes efforts Duke is making to improve its performance. But for those actions the penalty might have been higher.

An adequate basis for reduction of the 100 percent escalation of the base civil penalty has not been presented by the licensee. Consequently, the proposed civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) should be imposed.

[FR Doc. 88-5256 Filed 3-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-01391, License No. 12-01087-07 and EA 88-42]

Edward Hines, Jr. Medical Center; Order to Show Cause Why License Should Not be Modified, Effective Immediately

I

Edward Hines, Jr. Medical Center (Veterans Administration), Hines, Illinois, (licensee/VA Hines) is the holder of specific byproduct material license of broad scope No. 12-01087-07 (the license) issued by the Nuclear Regulatory Commission (Commission/NRC) pursuant to 10 CFR Parts 30, 33 and 35. The license authorizes the licensee to use: (1) Byproduct material listed in Groups I through VI of Schedule A, 10 CFR 35.100 (under the new revised 10 CFR Part 35 this material is identified in Subparts D, E, F, and G) for diagnostic and therapeutic procedures; (2) any byproduct material between Atomic Nos. 1 and 83, inclusive, and (3) xeron-133 for blood flow and pulmonary function studies. The license was originally issued on October 15, 1958, was most recently renewed on September 24, 1985, and expires on September 30, 1990.

II

From December 16, 1986 through January 22, 1987, and February 10 through November 4, 1987, NRC inspections and investigations were conducted at VA Hines. As a result of those inspections and investigations, it appears that the following occurred:

A. On August 14, 1986, Region III received an anonymous allegation that three diagnostic misadministrations occurred at VA Hines during the week of August 4-8, 1986, and those misadministrations were not reported to

the NRC as required by 10 CFR 35.43.¹ It was further alleged that Dr. Maynard L. Freeman, Assistant Chief, Nuclear Medicine Service, VA Hines, was notified of the three misadministrations by the Acting Chief Technologist for that week (the Assistant Chief Technologist), but took no action to ensure that those events were reported. The NRC subsequently verified that these misadministrations did occur. On August 24, 1987, an order to show cause why license should not be modified, effective immediately was issued which, among other actions, removed Dr. Freeman's authority to use or supervise the use of licensed materials at VA Hines due to his involvement in those events. A hearing is pending on the removal of Dr. Freeman.

B. On October 29, 1986, the Director, VA Hines, ordered an investigation into the three alleged unreported misadministrations. Regarding the first alleged misadministration, the V.A. Investigatory Board concluded on December 1, 1986, that the event did not involve a misadministration. That conclusion was based, in part, on statements of Mr. Niemi, the nuclear medicine technologist involved in the alleged misadministration. Regarding the first alleged misadministration, Mr. Niemi informed the Board that Dr. Freeman gave him verbal instructions to perform a brain scan instead of a bone scan as indicated on the written order for that patient. Mr. Niemi further advised the Board that the properly administered the brain scan as directed and nothing unusual, including a misadministration, occurred during the test.

C. From December 16, 1986, through January 22, 1987, NRC Region III conducted an inspection into the circumstances surrounding the three alleged unreported misadministrations. Regarding the first alleged misadministration, the NRC inspectors concluded that a misadministration could not be substantiated due to conflicting statements provided by the involved individuals. Mr. Niemi stated to the NRC inspectors that: (1) Dr. Freeman verbally instructed him to perform a brain scan on the patient; (2) he performed a brain scan on the patient; and (3) he did not give two injections of any type of materials to the patient.

D. From February 10 through November 4, 1987, the NRC Office of Investigations conducted an

investigation into the circumstances surrounding the three alleged unreported misadministrations. Regarding the first misadministration, the NRC investigation concluded that, on August 4, 1986, Mr. Niemi was directly involved in the injection of a patient who was scheduled for a bone scan but received a brain scanning agent. Without further consultation with an authorized user, Mr. Niemi subsequently injected the patient with a bone scanning agent.

E. Mr. Niemi testified under oath that he injected a brain scanning agent by mistake and, when he realized that a mistake had been made, he panicked and injected a bone scanning agent to cover up the mistake. In addition, Mr. Niemi testified that he had never been instructed by Dr. Freeman to perform a brain scan rather than a bone scan. The brain scanning material dose calibration ticket is missing, and Mr. Niemi testified that he may have discarded that dose calibration ticket because he knew that a mistake had been made and he did not want the ticket in the file. Further, Mr. Niemi testified that he falsely stated to the V.A. Investigatory Board and to NRC inspectors that he remembered Dr. Freeman telling him to inject a brain scanning agent because Dr. Freeman stated to the Chief of the Nuclear Medicine Department in Mr. Niemi's presence that he had given such an instruction, and Mr. Niemi feared contradicting Dr. Freeman. Thus, regarding the first misadministration, it appears that Mr. Niemi, the involved nuclear medicine technologist: (1) in an effort to mask the prior injection of an NRC licensed nuclear scanning agent, injected a second NRC licensed nuclear scanning agent without consulting an authorized user contrary to VA Hines License Conditions Nos. 12A and 20; (2) discarded records reflecting injection of one of the scanning agents; and (3) falsely represented the facts surrounding the misadministration to the NRC inspectors and a VA Hines Investigatory Board.

III

Although the actions that are described in Section II occurred some time ago, upon further review, the actions of Mr. Niemi demonstrate there is no longer reasonable assurance that without additional oversight he can be relied on to comply with Commission requirements concerning the use of licensed materials and to be candid with the Commission.

Licensees must adhere strictly to radiation safety requirements so that the medical use of NRC-licensed material does not create a radiation hazard to

workers and members of the public. The proper and competent performance of licensee employees is essential to ensuring the safe conduct of licensed activities. The NRC in its investigation and inspection process must be able to obtain complete and accurate information from licensee employees in order to carry out NRC's statutory mission.

Therefore, the public health, safety, and interest require that License No. 12-01087-07 be modified to prohibit the involvement of Mr. Niemi in licensed activities without further control. Furthermore, I have determined pursuant to 10 CFR 2.201(c) that no prior notice is required and pursuant to 10 CFR 2.202(f) that the public health, safety and interest require that this Order should be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 35, it is hereby ordered, effective immediately that:

License No. 12-01087-07 is modified by adding the following conditions:

A. Mr. Mark Niemi may only engage in activities involving the administration of NRC licensed material to humans so long as, prior to the administration, another nuclear medicine technologist or authorized user verifies in writing:

1. That the patient is the individual for whom the dosage is prescribed;
2. That it is the prescribed pharmaceutical; and
3. That the dosage of the pharmaceutical is properly measured and complies with the prescription within hospital measurement error limits.

The documentation of the verification shall include the date of each item that was verified and the signature of the person making the verification. If the verification is not contained on the standard hospital forms associated with the administration, the documentation of the verifications shall be retained as long as this requirement remains in effect.

B. VA Hines shall provide a written report to the NRC Regional Administrator, Region III, certifying that the verifications have been performed and describing Mr. Niemi's performance as it involves administration of radiopharmaceuticals and other radiological safety activities. The first report is to be provided within 30 days of the date of this Order and bimonthly thereafter.

¹ The Commission's regulations have since been revised. The requirements for reporting misadministrations are presently set forth in 10 CFR 35.33.

C. Following the submission of the sixth report required by condition B, above, the licensee may request in writing, including reasons therefore, removal of conditions A and B above.

D. The Regional Administrator, Region III, may relax or terminate the above conditions in writing for good cause.

V

The licensee or Mr. Niemi may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 30 days of the date of this Order which sets forth the matters of fact and law on which the licensee or Mr. Niemi relies. The licensee or Mr. Niemi may answer as provided in 10 CFR 2.202(d) by consenting to this Order. If the licensee fails to answer within the specified time or consents to this Order, this Order shall be final unless Mr. Niemi shows cause why the Order should not have been issued or requests a hearing.

VI

The licensee, Mr. Niemi, or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee or Mr. Niemi requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by the Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee, Mr. Niemi or any other person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 25th day of February 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88-5257 Filed 3-9-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-224]

University of California, Berkeley; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders to authorize the University of California, Berkeley (the licensee) to dispose of the component parts of the research reactor in their possession, in accordance with the licensee's application dated January 8, 1988 and terminating the Facility Operating License No. R-101.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 11, 1988, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a

notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioners' interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or

representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: (petitioner's name and telephone number); (date petition was mailed); University of California, Berkeley; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee, Mr. Milton Gordon, Office of the General Counsel, University of California, 590 University Hall, Berkeley, California 94720.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated January 8, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC.

Dated at Rockville, Maryland this 4th day of March, 1988.

For the Nuclear Regulatory Commission,
Lester S. Rubenstein,
Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-5255 Filed 3-9-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Midwest Stock Exchange; Application for Unlisted Trading Privileges in Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

March 4, 1988

The Midwest Stock Exchange, Inc. ("MSE") on March 1, 1988 submitted an

application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, i.e., securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-3108	COMS	3 Com Corp. Common No Par Value.
7-3109	LINB	Lin Broadcasting Corp. Common \$2.00 Par Value.
7-3110	NIKE	NIKE Inc. Class B Common No Par Value.
7-3111	PGULF	Pegasus Gold, Inc. Common No Par Value.
7-3112	STRA	Stratus Computer Common \$0.01 Par Value.
7-3113	WYSE	Wyse Technology Common No Par Value.

The MSE also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act on the following OTC issues:

File No.	Symbol	Issuer
7-3114	AGREA	American Greetings Corp. Class A Common \$1.00 Par Value.
7-3115	CAVN	CVN Cos. Common No Par Value.
7-3116	GVGT	Convergent Technologies Common No Par Value.
7-3117	GENE	Genentech, Inc. Common \$0.02 Par Value.
7-3118	LMED	Lymphomed, Inc. Common \$0.01 Par Value.
7-3119	MAXI	Maxicare Health Plans, Inc. Common No Par Value.

With the exception of Genentech, the MSE applied to withdraw UTP on these securities because of low transaction volume. The MSE applied to withdraw UTP in Genentech, Inc. because Genentech has applied to be listed on an exchange and thus the MSE no longer can trade the security on an OTC/UTP basis.

Comments

Interested persons are invited to submit on or before March 25, 1988, written comments, data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Commentators are requested to address whether they believe the requested withdrawal of UTP would be consistent with Section 12(f)(1)(C). In considering an application for extension of UTP in OTC securities under section 12(f)(1)(C), the Commission is required to consider, among other matters, the public trading, the activity in such security, the

character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system. The Commission may not grant such application if any rule of the national securities exchange making an application under 12(f)(1)(C) would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between under such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-5301 Filed 3-9-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24593]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 3, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 28, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as

amended, may be granted and/or permitted to become effective.

Mississippi Power Company (70-7204)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, an electric utility subsidiary of The Southern Company, a registered holding company, has filed with the Commission a post-effective amendment to its declaration pursuant to sections 6(a), 7 and 12(c) of the Act and Rules 42 and 50 thereunder.

By order dated May 21, 1986 (HCAR No. 24100) ("May 21st Order"), Mississippi was authorized, through March 31, 1988, to issue and sell up to \$35 million of the \$75 million of first mortgage bonds ("Bonds") it had requested. Jurisdiction was reserved with regard to the issuance and sale through March 31, 1988 of the remaining \$40 million of Bonds and of \$10 million of new preferred stock ("Preferred Stock") pending completion of the record. By order dated April 10, 1987 (HCAR No. 23470), Mississippi was further authorized to issue and sell up to an additional \$10 million of Preferred Stock through March 31, 1988, for a total of up to \$20 million of Preferred Stock. Jurisdiction was released over the issuance and sale of the initial \$10 million of Preferred Stock. Jurisdiction continued to be reserved over the issuance and sale of the remaining \$40 million of Bonds.

Mississippi has issued and sold \$35 million of Bonds as authorized by the May 21st Order. Mississippi now seeks authority to issue and sell the remaining \$40 million of Bonds and the \$20 million of New Preferred Stock through March 31, 1989.

Alabama Power Company (70-7205)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration with this Commission pursuant to sections 6(b), 9(a) and 10 of the Act and Rules 50 and 50(a)(5) thereunder.

By orders dated May 7, 1987, October 20, 1987, October 23, 1987, November 2, 1987 and February 5, 1988 (HCAR Nos. 24088, 24479, 24483, 24487 and 24574, respectively), jurisdiction had been reserved, in pertinent part, through March 31, 1988, over: (1) The financing of pollution control facilities in an amount of up to \$125 million; (2) the issuance and sale of \$325 million of first mortgage bonds ("Bonds") by competitive bidding; (3) the issuance and sale of \$10 million of Class A

Preferred Stock ("Preferred Stock") by competitive bidding; and (4) the terms, conditions, fees and expenses associated with the issuance and sale of \$50 million of Preferred Stock under an exception from competitive bidding.

Alabama now seeks authorization, through March 31, 1989, to: (1) Finance its pollution control facilities in an amount of up to \$125 million; (2) issue and sell \$325 million of Bonds by competitive bidding; (3) issue and sell \$10 million of Preferred Stock by competitive bidding; and (4) issue and sell \$50 million of Preferred Stock under an exception from competitive bidding, each as previously authorized by the Commission (HCAR Nos. 24088, 24479, 24483, 24487 and 24574).

Georgia Power Company (70-7504)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to sections 6, 6(b), 7, 9(a), and 10 of the Act and Rules 50 and 50(a)(5) thereunder.

Georgia proposes on or before December 31, 1989, to issue and sell first mortgage bonds, preferred stock, pollution control revenue bonds and effect borrowings in the form of term loans, in an aggregate amount of up to \$1,050,000,000 in any combination of issuance but with sub-limits imposed on each security. The sub-limits are as follows: \$600 million of first mortgage bonds, \$175 million of preferred stock, \$150 million of pollution control revenue bonds and \$125 million of term loans. However, it is also proposed that, in the event that Georgia decides to exceed any of the sub-limits, the Commission reserve jurisdiction to review issuances of each security in excess of such sub-limit. In no event will the total amount exceed \$1,050,000,000. It is further proposed that the Commission reserve jurisdiction over any issuance and sale of preferred stock until such time as Georgia has the required coverage ratio pursuant to its charter. Georgia also proposes to issue and sell from time to time, on or prior to December 31, 1989, short-term notes to banks and commercial paper to dealers in an aggregate principal amount at any one time outstanding of up to \$1 billion. Georgia proposes to enter into interest rate swap agreements having terms of up to seven years covering an underlying principal amount of debt not to exceed \$1 billion.

Georgia requests an exception from the dividend limitation provisions of the Commission's 1956 Statement of Policy Regarding First Mortgage Bonds so that

its new first mortgage bond issues, including any first mortgage bonds issued as collateral for pollution control obligations, would be subject to the common stock dividend restrictions of Georgia's June 1, 1984 Supplemental Indenture. Georgia proposes to use March 31, 1984, rather than the respective dates of issuance of the series of new bonds, as the starting date for accumulation of earned surplus, and to use \$302 million as the annual dividend allowance.

If pollution control revenue bonds ("Revenue Bonds") are issued, Georgia will enter into a Loan Agreement with the Development Authority ("Authority") of each county where Georgia has pollution control facilities, relating to each issue of the Revenue Bonds. In order to obtain a favorable rating on the Revenue Bonds, Georgia may issue and sell collateral bonds, cause an irrevocable Letter of Credit of a bank to be delivered to the Trustee, convey to the Authority a subordinated security interest in property of Georgia, cause an insurance company to issue a policy of insurance guaranteeing the payment when due of principal of and interest on such series of the Revenue Bonds, or guarantee the payment of the principal of, premium, if any, and interest on the Revenue Bonds.

The short-term borrowings would have a maximum maturity of 270 days, be renewable at maturity and may be converted to term loans at any time at Georgia's option. Under each agreement, Georgia is obligated to pay a commitment fee based upon the unused portion of the bank's commitment. The commitment fees vary from bank to bank from $\frac{1}{4}$ to $\frac{1}{16}$ of 1 percent per annum based on the unused portion. Assuming no usage, the annual commitment fees payable by Georgia would aggregate \$5,884,400. In addition, in connection with a facility, Georgia has agreed to pay fees to the agent banks aggregating $\frac{1}{4}$ and $\frac{1}{8}$ of 1 percent, respectively, of the amount of such facility during the first and second years. The current effective annual interest rates on individual borrowings would range from 7.64 to 9.188 percent for short-term borrowings, and from 7.604 to 9.25 percent for term-loan borrowings.

For the first mortgage bonds and preferred stock, Georgia will comply with the competitive bidding requirements of Rule 50 of the Act, as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623). Georgia may amend this application to seek an exception from the competitive bidding

requirements under Rule 50 so that it may offer the Bonds and Stock through a negotiated public offering or private placement. Georgia has asked for an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for the pollution control revenue bonds, collateral bonds, the guarantee, commercial paper, and the interest rate swaps.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-5280 Filed 3-9-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Washington County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301. Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, and the Washington County Department of Land Use and Transportation will prepare an environmental impact statement (EIS) on a proposal to improve Tualatin/Sherwood-Edy Road in Washington County, Oregon. The proposed

improvement would involve the reconstruction of the existing Tualatin/Sherwood-Edy Roads between the towns of Sherwood and Tualatin for a distance of about 4 miles.

Improvements to the roads are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the improvement of the Six Corners Intersection on Highway 99W. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; and (3) widening the existing two-lane highway to three or five lanes while also improving both vertical and horizontal curvatures.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to provide organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings have been held in Tualatin and Sherwood between February and November 1987. In addition, a public hearing will be held. Public notices of the time and place of the meetings and the hearing will also be publicized. The Draft EIS will be available for public and agency review and comment prior to the public hearing. The initial Technical Advisory Committee meeting on December 16, 1986, served as the scoping meeting for the project.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on March 1, 1988.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 88-5272 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes April 12, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9926-N	Implementos Agrícolas, LaLa, N.A., Kerpen, West Germany.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(a)(2), 175.3, 178.65-2, 178.65-5.	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT specification 39 for shipment of those nonflammable gases presently authorized for shipment in DOT specification 39 cylinders. (Modes 1, 2, 3, 4, 5.)
9933-N	Mobay Corporation, Pittsburgh, PA	49 CFR 173.245	To authorize shipment of Dimethyldicarbonate, described as Corrosive liquid, poisonous, n.o.s., classed as Corrosive material, in a non-DOT specification packaging consisting of a 25 liter, plastic coated, glass bottle enclosed in a polystyrene overpack. (Mode 1.)
9934-N	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.274	To authorize shipment of Fluorosulfonic (or Fluosulfonic) acid, classed as corrosive material, in a non-DOT specification composite packaging. (Modes 1, 4.)

NEW EXEMPTIONS—Continued

Application	Applicant	Regulation(s) affected	Nature of exemption thereof
9935-N	Atlas Powder Company, Dallas, TX	49 CFR 173.66(e), 178.209	To authorize shipment of detonators, classed as Class A or Class C explosive, in non-DOT Specification fiberboard boxes made of 275 pound test board and meeting the test requirements for DOT specification 12H fiberboard boxes. (Modes 1, 2, 3, 4.)
9936-N	Siepe GmbH, Durango, Mexico	49 CFR 173.154, 173.191, 173.217, 173.245b, 178.16	To authorize the manufacture, mark and sell of non-DOT 30 gallon capacity open head polyethylene container comparable to DOT-35 for shipment of phosphorous pentachloride, classed as corrosive material and other corrosive materials and oxidizers presently authorized in DOT-35 containers. (Modes 1, 2, 3.)
9937-N	Van Leer Verpackungen GmbH, Koln, West Germany	49 CFR 173, 178.224	To authorize the manufacture, marking and sale of non-DOT specification fiber drums that generally comply with DOT specification 21C fiber drums with the exception of wall thickness, for shipment of materials authorized for shipment in DOT-21C drums. (Modes 1, 2, 3.)
9938-N	Explosive Technology, Fairfield, CA	49 CFR 173.65(a)(4)	To authorize shipment of materials classed as Class A explosive, Type 8, in a package that exceeds the weight limit prescribed by 49 CFR. (Mode 1.)
9939-N	National Aeronautics and Space Administration, Washington, DC	49 CFR 172.101, table column (6)(b), 173.92	To authorize shipment of a rocket motor, class B explosive, in a specially designed packaging not to exceed 1,500 pounds as a completed package. (Modes 1, 4.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 7, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-5320 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 47

Thursday, March 10, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Friday, March 11, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Enforcement Matter OS# 5527

The Commission will consider Enforcement Matter OS# 5527.

2. Enforcement Matter OS# 3530

The Commission will consider Enforcement Matter OS# 3530.

Agenda revised 3/7/88 to add Item 1.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sady E. Dunn,

Secretary.

[FR Doc. 88-5356 Filed 3-8-88; 1:17 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:32 p.m. on Thursday, March 3, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the possible failure of a certain insured bank; and (2) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did

not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 4, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-5318 Filed 3-7-88; 4:31 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 14, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,183-L (Amendment)

Knoxville Consolidated Office, Knoxville, Tennessee

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Contracts for the FDIC Loose Leaf Reporting Service and its Index.

Discussion re: Analysis of interest-rate risk in processing applications of non-FDIC-insured institutions for Federal deposit insurance.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 7, 1988.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-5353 Filed 3-8-88; 1:16 pm]

BILLING CODE 6714-01-23

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 14, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director Office of Corporate Audits and Internal Investigations:

Audit Report re:

The County Bank, Manatee County [P.O. Palmetto], Florida (2647) (Memo dated January 22, 1988)

Audit Report re:

Park Bank of Florida, St. Petersburg, Florida (2536) (Memo dated January 22, 1988)

Audit Report re:

The Security National Bank and Trust Company of Norman, Norman, Oklahoma (2631) (Memo dated January 29, 1988)

Audit Report re:

United Oklahoma Bank, Oklahoma City, Oklahoma (2662) (Memo dated January 15, 1988)

Audit Report re:

Lubbock Consolidated Office, Cost Center—403 (Memo dated January 27, 1988)

Audit Report re:

Oklahoma City Consolidated Office, Cost Center—401 (Memo dated January 29, 1988)

Audit Report re:

St. Joseph Consolidated Office, Cost Center—306 (Memo dated February 5, 1988)

Audit Report re:

Denver Consolidated Office (Memo dated January 29, 1988)

Audit Report re:

Omaha Consolidated Office (Memo dated February 17, 1988)

Discussion Agenda:

Applications for Federal deposit insurance:

The Glen Burnie Mutual Savings Bank, an operating non-FDIC-insured savings bank located at 1 Crain Highway, S.E., Glen Burnie, Maryland.

Columbian Savings Bank, an operating non-FDIC-insured savings bank located at 305 St. John Street, Havre de Grace, Maryland.

Application for consent to merge and establish one branch:

Sunray State Bank, Sunray, Texas, an insured State nonmember bank, for consent to merge, under its charter and title, with First National Bank of Dumas, Dumas, Texas, and for consent to establish the sole office of First National Bank of Dumas as a branch of the resultant bank.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:

Audit of the Management and Disposal of Owned Real Estate, Addison Consolidated Office (Memo dated February 17, 1988)

Audit Report re:

New York Regional Office Cost Center—500 (Memo dated January 29, 1988)

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 7, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-5354 Filed 3-8-88; 1:16 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88-4743.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 10, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Draft Advisory Opinion 1988-3—John R. McKay on behalf of the American Pilots' Association.

DATE AND TIME: Tuesday, March 15, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 17, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings. Correction and Approval of Minutes. Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.

Status of Presidential Audits. Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88-5369 Filed 3-8-88; 3:20 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 16, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: March 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5378 Filed 3-8-88; 3:21 pm]

BILLING CODE 6210-01-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 4, 1988.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-5323 Filed 3-8-88; 10:26 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 5, 1988.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-5324 Filed 3-8-88; 10:26 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 6, 1988.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-5325 Filed 3-8-88; 10:26 am]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 8, 1988.

PLACE: On board MV MISSISSIPPI at foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 88-5326 Filed 3-8-88; 10:26 am]

BILLING CODE 3710-GX-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, March 16, 1988.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Final Rule: Amendment to § 701.20, NCUA Rules and Regulations, Fidelity Bond and Insurance Coverage for Federal Credit Unions.
6. Request by Michigan Federal Credit Union to Expand its Community Field of Membership.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Wednesday, March 16, 1988.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).
3. Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).

4. Termination of Conservatorship. Closed pursuant to exemptions (7) and (8).
5. Apportionment of Regional Staff. Closed pursuant to exemption (2).
6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-5364 Filed 3-8-88; 2:42 pm]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 14, 1988:

A closed meeting will be held on Thursday, March 17, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, March 17, 1988, at 2:30 p.m., will be:

- Institution of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceedings of an enforcement nature.
- Settlement of injunctive actions.
- Formal orders of investigation.
- Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brad Belt at (202) 272-2467.

Jonathan G. Katz,

Secretary.

March 8, 1988.

[FR Doc. 88-5381 Filed 3-8-88; 3:51 pm]

BILLING CODE 8010-01-M

FRIDAY MARCH 10, 1988

Thursday
March 10, 1988

Part II

Department of Health and Human Services

Family Support Administration

45 CFR Parts 16 and 402
State Legalization Impact Assistance
Grants; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 16 and 402

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This rule implements section 204 of Pub. L. 99-603, the Immigration Reform and Control Act (IRCA) of 1986 (the Act). Section 204 of the Act establishes State Legalization Impact Assistance Grants (SLIAG) which are available to States. These grants may be used for reimbursement of or payments for the costs incurred by State and local governments in providing public assistance, public health assistance, and educational services to eligible legalized aliens as defined in the Act and this regulation.

DATE: The rule is effective March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson, Director, State Legalization Assistance Division, Office of Refugee Resettlement, Family Support Administration, 330 Independence Avenue, SW., Room 5627, Washington, DC 20201 Telephone: 202-245-0562.

SUPPLEMENTARY INFORMATION: Section 204 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), enacted on November 6, 1986, establishes State Legalization Impact Assistance Grants (SLIAG) for States for fiscal year 1988 and for each of the three succeeding fiscal years. The purpose of SLIAG is to alleviate the financial impact on State and local governments that may result from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

The legislative history of the Act indicates that Congress intended SLIAG funds to be used only for those additional State costs resulting from the passage of the Act, not for every cost related to meeting the needs of this eligible alien population. The legislative history also indicates that Congress did not expect the SLIAG appropriation to reimburse 100 percent of these additional costs.

Within the Department of Health and Human Services (HHS), SLIAG will be administered by the Office of Refugee Resettlement (ORR) in the Family Support Administration (FSA). FSA has

established a new State Legalization Assistance Division within the Office of Refugee Resettlement to administer SLIAG. Similar to some of the other grant programs administered by FSA, SLIAG will be administered directly from the FSA central office in Washington, DC. The State Legalization Assistance Division may be reached at the address and phone number listed above.

The Department published a notice of proposed rulemaking on August 13, 1987. We received more than 80 comments on the proposed rule. The commenters suggested a number of changes to the proposed rule which we have incorporated into this final rule. The major changes made in the rule concern the allocation of funds among the States (Subpart D), the provision of educational services (Subparts A, B and C), State applications (Subpart E), and reporting requirements (Subpart F). The provisions of the final rule and our responses to the comments on the proposed rule are discussed below.

Subpart A—Introduction

Section 402.1—General

Section 201 of the Act, which adds new section 245A to the Immigration and Nationality Act (INA), creates a program of legalization under which the status of certain aliens who have resided unlawfully in the United States since prior to January 1, 1982, may be adjusted to that of lawful temporary resident, and eventually to that of lawful permanent resident. New INA section 245A(h) provides that for five years from the date of adjustment to lawful temporary resident status, an alien is barred from participation in: (1) Need-based Federal programs of financial assistance to be identified by the Attorney General by regulation, including Aid to Families with Dependent Children (AFDC); (2) Medicaid (with exceptions noted below); and, (3) Food Stamps. Aged, blind or disabled individuals and certain Cuban-Haitian entrants are excepted from the bar to eligibility (although these individuals must still meet the eligibility requirements of the various programs to which they might apply). Also, the law affords limited Medicaid benefits to otherwise eligible aliens needing emergency services or services for pregnant women and full Medicaid benefits to children under 18. Finally, section 201 of the Act specifies certain programs, including Supplemental Security Income (SSI), which the Attorney General may not designate as "programs of financial assistance," i.e., programs from which aliens legalized

under this section are not barred by virtue of their adjustment of status under sections 245A or 210A of the INA.

Section 302 of the Act adds new section 210 to the INA to provide for granting lawful temporary resident status, and eventually lawful permanent resident status, to certain aliens who performed seasonal agricultural work in the United States during a specified period of time ("Special Agricultural Workers," or "SAWs"). Aliens lawfully admitted for temporary residence under this section are to be regarded as aliens lawfully admitted for permanent residence for purposes of laws other than immigration, and therefore will be eligible to participate in many Federal programs. They are, however, barred from receiving AFDC for five years from the date they are granted temporary resident status. Those barred from AFDC by this section, but who would otherwise have been eligible, will be provided access to the Medicaid program within the same limits as apply to lawful temporary residents under section 245A of the INA.

Section 303 of the Act adds new section 210A to the INA to provide for the admission as lawful temporary residents of additional aliens to the United States to meet a shortage of agricultural workers, beginning in fiscal year 1990 ("Replenishment Agricultural Workers," or "RAWs"). Aliens granted lawful temporary resident status under this section generally will be barred from participation in need-based Federal assistance programs, other than Food Stamps, for five years from the date they obtain temporary resident status, except that the bar does not apply to aliens who are aged, blind, or disabled, and the same exceptions which permit access to Medicaid under section 245A(h) of the INA are applicable to this group of aliens. Notwithstanding the aforementioned bar to program participation, aliens lawfully admitted for temporary residence under this section are to be regarded as aliens lawfully admitted for permanent residence for purposes of laws other than immigration.

The Department issued interim final regulations regarding aliens, eligibility for Aid to Families with Dependent Children and the adult assistance programs for the aged, blind and disabled in Guam, Puerto Rico, and the Virgin Islands on December 24, 1987 (52 FR 48687). The Department will issue in the near future regulations incorporating the changes made by the Act in aliens, eligibility for Medicaid.

Comment (Public Charge)

Several commenters asked for clarification of the "public charge" provision in the INA as it relates to the allowability of expenditures under SLIAG. Other commenters requested that we define or clarify what is meant by public charge.

Response

In order to adjust status, an alien must be "admissible as an immigrant" under the INA. An alien who is likely to become a "public charge" may be inadmissible as an immigrant, and therefore denied status adjustment under the Act. INS regulations at 8 CFR 245a.2(k)(4) (52 FR 16212, May 1, 1987) provide that the receipt of "public cash assistance" is a factor INS may take into account in determining, on a prospective basis, whether an individual is likely to become a "public charge." Authority to define "public charge" and to make determinations of an alien's admissibility rest, by law, with the Attorney General. Therefore, we have declined to define the term in either the proposed or final regulation for SLIAG.

Several commenters believed that the public charge provisions in the INA and IRCA bar eligible legalized aliens from State-funded assistance programs. Section 245A(h)(1) of the INA allows States to bar eligible legalized aliens from State-funded assistance programs. However, the public charge provisions in INA and IRCA are not a bar to receipt of assistance. Our regulation allows for reimbursement of allowable SLIAG-related costs. It does not override State decisions as to whether to provide assistance to eligible legalized aliens or the Attorney General's prerogative to determine whether an alien is admissible as an immigrant. If a State elects to provide assistance and an alien receives allowable benefits or services, costs associated with providing those benefits or services are allowable as SLIAG-related costs independent of INS' determination of whether receipt of that assistance renders the alien likely to become a public charge.

Program Authorized. Section 204 of the Act appropriates funds for each of fiscal years 1988 through 1991 for State Legalization Impact Assistance Grants to provide funds to State and local governments for part of the costs of programs of public assistance, programs of public health assistance, and educational services provided to "eligible legalized aliens." The term "eligible legalized alien," as defined in sections 204(j) and 303(c) of the Act, means an alien who has been granted lawful temporary resident status under

section 245A, 210, or 210A of the INA, but only until the end of the five-year period beginning on the effective date of such adjustment. (See "Definitions," below.)

Federal Offset. The amount of SLIAG funds available to States in each year is, generally stated, \$1 billion minus an amount termed the "offset." The offset is defined in section 204(a) of the Act as the total of estimated Federal expenditures for programs of financial assistance, for Food Stamps, and for Medicaid for which aliens legalized under new section 245A of the INA are eligible because of an exception to the general provisions at 245A(h) making them ineligible for such benefits. Federal expenditures under the SSI program and under the other programs listed at section 245A(h)(4) are not included in the offset. In addition, the Department interprets section 210A(d) of the INA to provide that Federal expenditures for programs of financial assistance and Medicaid to eligible aliens legalized under section 210A of the INA, pertaining to RAWs, are also to be included in the offset. However, expenditures for Federal programs providing assistance and services to SAWs are not included in the offset amount.

For fiscal year 1988, the amount of the offset is set at \$70 million by the Act. The Act requires that Federal costs in excess of this amount for fiscal year 1988 must be recovered by adding them to the estimated offset amount applicable to fiscal year 1989. Before allotment to the States, the appropriation is further reduced by amounts reserved for the Federal costs of administering section 204. The Department currently estimates that approximately \$928.5 million will be available for grants to States in FY 1988 and \$643 million in FY 1989.

Comments

Several commenters requested that we include in the final rule the definitions and procedures that the Federal government will use to compute the offset and to subject those regulations to notice and comment.

Response

The Act is clear as to the costs that must be offset against the \$1 billion authorized by the Act. The Act also requires that our estimates of the offset be included in the budget submitted to the Congress by the President. Thus, our offset estimates will be available for public review. We therefore believe it is unnecessary to regulate the process of deriving these estimates.

At this time, it is the Department's intention to include in the Federal offset only the program costs associated with providing assistance to eligible legalized aliens under the Medicaid and Food Stamp programs. These programs comprise the bulk of the costs associated with providing assistance to eligible legalized aliens. We have determined that, at the present time, it is not administratively feasible to develop estimates of the costs of providing services to eligible legalized aliens (principally ELAs who are aged, blind, or disabled) in the 43 programs which the Attorney General has proposed be designated as "programs of financial assistance" and thereby unavailable to aliens who legalize under section 245A or 210A of the INA.

Although Cuban/Haitian entrants who adjust status under section 245A of the INA are exempted from the general bar to the receipt of AFDC, we anticipate that few costs which may be included in the offset will be incurred with respect to this group. We expect that Cuban/Haitian entrants who adjust status will do so under section 202 of the Act, which allows for direct adjustment to permanent resident status. Costs associated with providing assistance to aliens who adjust under section 202 of the Act are not included in the offset. (Likewise, State and local costs associated with providing assistance to this category of aliens are not reimbursable under SLIAG.)

Section 402.2—Definitions

We received a number of comments concerning the definitions included in the proposed rule. In general, these comments requested that we broaden the definition of public assistance and educational services and clarify that certain specific activities meet the proposed definitions. We have adopted these suggestions whenever consistent with the Act and Departmental policy. (These changes and the comments that prompted them may be found in Subpart B, Use of Funds, of this Preamble.)

Educational Services

In addition to other changes, we have modified the definition of educational services to clarify that SLIAG funds may be used for the full range of services allowed by the Emergency Immigrant Education Act (20 U.S.C. 4101, et seq.) and to provide services to adult eligible legalized aliens that are authorized under the Adult Education Act (20 U.S.C. 1201, et seq.). (See comments under Subpart B, Use of Funds.) Because the terms "local educational agency," "state educational agency" and

"public" and "non-public" schools now are used in this regulation, we have incorporated by reference the definitions of these terms as promulgated by the U.S. Department of Education in 34 CFR Part 77, or, if applicable, for the term "state educational agency," in 34 CFR Part 425.

Eligible Legalized Alien

We have not changed the definition of eligible legalized alien in the final rule. The definition closely tracks the statutory definition in section 204(j) of the Act.

Comment (Cuban/Haitian entrants and pre-'72's). One commenter asked whether SLIAG funds can be used for costs associated with Cuban/Haitian entrants or aliens who obtain legal status by virtue of the change in the registry date in section 249 of the INA (section 203 of the Act).

Response. Costs associated with providing public assistance, public health assistance, or educational services to Cuban/Haitian entrants who adjust status under section 245A or 210 of the INA are reimbursable under SLIAG. However, we anticipate that most Cuban/Haitian entrants will choose to adjust status under section 202 of the Act, which provides for direct adjustment to permanent resident status. Costs associated with aliens who adjust under section 202 are not reimbursable under SLIAG. Likewise, costs associated with aliens who adjust status under section 249 of the INA which changes the registry date to January 1, 1972 are not reimbursable under SLIAG.

In addition, the U.S.-born children of aliens who adjust status under sections 245A, 210, or 210A of the INA are U.S. citizens, not eligible legalized aliens. Costs associated with providing services to these citizen children are not reimbursable under SLIAG.

Public Assistance Definition. We have amended the definition of public assistance to include services for which a State or local government charges fees based upon the financial circumstances of the participant. For clarity, we have included the description of other assistance within the definition of public assistance. (See discussion of comments under Subpart B.)

Recipient Definition. After analyzing the comments, we realized that there was some misunderstanding as to the meaning of the word "recipient" as used in the regulation. The final rule clarifies that "recipient" has the same meaning as it does in 45 CFR Part 74, that is, grantees and subgrantees.

SLIAG-Related Cost Definition. In response to comments on other sections

of the proposed regulation, we have made several clarifications to the definition of SLIAG-related costs. First, we have made clear that SLIAG-related costs means the expenditure of funds to provide allowable services or benefits to eligible legalized aliens under programs of public assistance, public health assistance, and educational services. Second, SLIAG-related costs for public assistance, public health assistance, educational services, and SLIAG administrative costs are limited to the actual amount expended for an allowable purpose. The final rule further clarifies that SLIAG-related costs for education are subject to limits under the Emergency Immigrant Education Act, as incorporated by the Act and specified in section 402.11 of this regulation. (These provisions specify the maximum amount of SLIAG funds that may be paid for educational services. A fuller explanation of these provisions is provided in the preamble to Subpart B.)

This clarification ensures that SLIAG-related costs reported by States are comparable and meet the requirements of the Act for the allocation of funds. Section 204(b)(1)(C) provides for the allocation of funds based, in part, on "the amount of expenditures the State is likely to incur . . . for which reimbursement or payment may be made under [SLIAG]" (emphasis added). The Act does not place a dollar limit on reimbursement for public assistance and public health assistance. However, payments for educational services are limited by the Act's incorporation of the definitions and provisions of the Emergency Immigrant Education Act, as specified in section 402.11 of this regulation. If we did not include the limitation on SLIAG-related costs for educational services, States conceivably could include in their SLIAG-related cost estimates costs above the limits for which payment could lawfully be made under the Act. This would result in the allocation of funds based on costs for which SLIAG funds could not be used and would be contrary to the language of the Act. (See also the preamble to Subpart D.)

Third, the final rule clarifies that SLIAG-related costs must be net of reimbursement or payment from other Federal programs and net of program income, as defined in 45 CFR 74.42, e.g., fees, tuition, or other charges paid by eligible legalized aliens receiving a service. Program income is to be treated using the deductive alternative provided for in 45 CFR 74.42.

Subpart B—Use of Funds

Allowable Use of Funds

General

The Act allows States to use SLIAG funds to reimburse the costs of providing public assistance and public health assistance and to make payments to State educational agencies for educational services provided to eligible legalized aliens, i.e., aliens who have been granted legal status under section 245A, 210, or 210A of the INA ("legalization program").

In addition, section 204(c) of the Act allows States to use SLIAG funds to reimburse State or local government costs of public health assistance provided to aliens who are applying in a timely manner for adjustment of status under section 245A of the INA. For this purpose, an alien is considered to be applying for adjustment to lawful temporary resident status if he/she has filed an application and paid the application fee at an INS facility or a qualified designated entity pursuant to 8 CFR 245a.2 (e) and (f) (FR 16211, May 1, 1987) with respect to filing and 8 CFR 245a.2(i) (FR 16212, May 1, 1987) with respect to the medical examination. The medical examination (form I-693) must be presented to INS at the time of the interview, and shall be incorporated into the applicant's record. This interpretation is in keeping with the House Energy and Commerce Committee report, which states that such reimbursement can be made for the cost of services to those who "have filed . . . bona fide applications for legalization and are awaiting a determination." (H.Rpt. 99-682)

In the proposed rule, we stated that SLIAG funds may not be used to reimburse the costs of public health assistance provided to those applying for adjustment under section 210 (SAWs) or 210A (RAWs).

Comment (Applicant Issue)

Many commenters suggested that we reimburse State and local costs incurred in providing public health assistance to those applying for adjustment under section 210 or 210A of the INA, as well as those applying for adjustment under section 245A. Several commenters contended that Congress did not intend to exclude costs associated with providing public health assistance to those applying for status adjustment under sections 210 and 210A of the INA. Others commented that the INA as amended by IRCA does not call for disparate treatment in other areas of public health; therefore, they conclude

that it is not intended in this case. Several commenters indicated that differentiating applicants under section 245A from applicants under other sections would be difficult.

Response

The Act specifically limits the reimbursement of public health costs associated with applicants for status adjustment to those applying for adjustment under section 245A. We have no legal basis for extending reimbursement of public health assistance costs to those applying under sections of the INA other than the one enumerated in IRCA.

In practice, there will be little difference in the treatment of public health costs for those applying for adjustment under section 210 of the INA and those applying for adjustment under section 245A. The effective date of legal status will be the date that the alien filed his or her application with INS and paid the required fee. Public health costs incurred by State and local governments would be reimbursable from such date. Only public health costs for services delivered to an individual adjusting under section 210 or 210A whose application was denied would be non-reimbursable.

We do not believe that States will have difficulty in identifying applicants under section 245A. When an alien files a nonfrivolous application with the INS, he/she is given a form I-688A (Temporary Work Authorization). This card indicates the section of the Act under which the alien is seeking to adjust status. We have clarified in the preamble to this regulation that "applying in a timely manner" means that the alien has filed an application with INS or with a qualified designated entity, provided the alien has consented to having the designated entity forward the application to INS. This was unclear in the preamble to the proposed rule.

Comment (Educational Services to Applicants)

Several commenters advocated allowing payment for educational services provided to those applying for adjustment of status because they feared that delays in access to service of up to several months while ELAs wait for applications to be approved will create administrative burdens and ultimately will mean some ELAs are not served. Two commenters raised the possibility that reimbursement could be claimed only for those applicants whose status eventually is adjusted.

Response

The Act is explicit in allowing educational services for eligible legalized aliens, who by definition are individuals who *have been granted* status adjustment. However, once status has been adjusted, the effective date for that adjustment is the date of application with INS. If a State provides educational services to applicants in anticipation of their applications being approved by INS, the costs of such services would be allowable, retroactive to the date of status adjustment, provided that the alien's application is in fact approved by INS and that the costs are consistent with the Act, this regulation, and the State's application for funds under this Part. Costs associated with individuals whose applications are disapproved by INS may *not* be paid with SLIAG funds, and only services provided after October 1, 1987 may be covered with SLIAG funds.

Comment (Outreach)

Another commenter advocated allowing SLIAG funds to be used for State outreach costs including costs incurred in consulting with INS officials, QDE representatives and community groups, and costs associated with notices and posters publicizing IRCA.

Response

Outreach costs associated with the legalization process itself cannot be considered to be allowable costs under SLIAG. (See the discussion of the first comment under "Uses of SLIAG Funds, below.") To the extent that outreach efforts are an integral and normal part of an allowable SLIAG activity, e.g., public health assistance, such costs would be allowable under SLIAG, provided that such activities otherwise meet the definitions in this part and are allocable to SLIAG.

Uses of SLIAG Funds

The Act specifies the types of assistance for which SLIAG funds may be used: Public assistance, public health assistance, and educational services. Section 402.1 of the regulation defines these uses. As noted in the preamble section covering that section, we have made several changes to the definitions.

Comments (use of SLIAG Funds for Other Purposes)

Several commenters specified other activities for which they would like use of SLIAG funds to be allowed. These included helping aliens apply for status adjustment (e.g., pay their application fees), providing assistance to entities which assist aliens in applying for status

adjustment under the Act (qualified designated entities), and paying costs associated with a discrimination complaint program.

Response

We see no basis in the Act which would permit such uses. The Act restricts the use of SLIAG funds to providing public assistance, public health assistance, and educational services, as defined by the Act and this regulation, to eligible legalized aliens.

Providing "assistance" to an alien applying for status adjustment or to qualified designated entities to assist aliens in applying for status adjustment generally would not fall under any of the three permissible uses of SLIAG funds. Further, with the exception of educational services, SLIAG funds may be used only for programs or activities which are generally available to the citizens of a State. The use of funds to assist aliens applying under the Act would be inconsistent with this condition.

Additionally, with the exception of public health assistance, SLIAG funds can be used to provide reimbursement or payments for services or assistance only to aliens who *have received* adjusted status under the Act. (Reimbursement for assistance or services may be made retroactive to the date the alien was granted legal status by INS.) By definition, assistance provided to aliens applying for status adjustment (except for public health assistance) is not an allowable use of SLIAG funds. Similarly, there is no provision in the Act which allows reimbursement for costs associated with discrimination complaints.

Public Assistance

Section 204(j) of the Act provides that the term "programs of public assistance" means programs within a State which: Provide cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals; are generally available to needy individuals; and receive funding from units of State or local government. In our notice of proposed rulemaking, we clarified the definition of public assistance by requiring that individuals applying for such assistance meet specified income and resource requirements to be eligible. Based on comments we received, we have modified this provision in the final rule. The definition in the final rule includes services for which a State or local government charges fees based upon the financial circumstances of the ELA receiving such services.

In determining whether expenses are allowable under SLIAG, States should review the specific program in question to determine that it meets all the requirements of the Act and this regulation, including a requirement that applicants under the program meet specified income and resource requirements, or that payment for services be based on an income or resources. Reimbursement is limited to SLIAG-related costs as defined in this regulation. Several commenters appeared to be under the impression that our regulation would affect the eligibility of eligible legalized aliens for assistance under State or local programs. This regulation does not affect eligibility. It specifies those programs for which we believe the Act provides for Federal reimbursement of costs of public assistance and public health assistance or payments for educational services. We also note that the legislative history is quite clear that Congress did not intend SLIAG to provide reimbursement for all State and local government costs.

Comment (Definition of Public Assistance)

We received several comments suggesting that the proposed definition of public assistance was too restrictive in that it required programs to have a means test, i.e., income and resource requirements, as a condition of eligibility in order for costs to be reimbursed with SLIAG funds. Arguing that the proposed definition would not allow States the leeway necessary to serve the eligible legalized alien population, most commenters recommended that the means test be dropped.

Several other commenters requested that we clarify and specify what we mean by "other assistance." Still others contended that our definition of "other assistance" was too narrow and recommended that we include employment training, housing assistance, and maternity services, as well as protective services, adoption services, foster care, and other social service activities.

Response

We believe that the scope of what is allowed under public assistance, as clarified, is consistent with the Act.

First, the legislative history closely associates programs of public assistance (section 204(j) of the Act) and the programs included in section 245A(h)(1)(A) of the INA. The programs named in section 245A(h)(1) of the INA—AFDC, Food Stamps, and Medicaid—require a means test as a

condition of eligibility. The Act generally bars most eligible legalized aliens from these Federal programs. On the other hand, section 204 of the Act provides for reimbursement of State and local costs associated with providing public assistance under State and local programs to eligible legalized aliens. In fact, the Conference Report (H.Rpt. 99-1000) addresses the two provisions in the same paragraph, when it states: "The funds were authorized to be used for state programs of public assistance, programs of public health assistance, and local education agency services. All legalized aliens were disqualified for five years from all federal programs of public assistance, except for SSI and Medicaid in certain circumstances." (See also H.Rpt. 99-682, p. 77.)

We note that Congress is well acquainted with the term "social services." For example, under the Refugee Act of 1980, 8 U.S.C. 1522 (Pub. L. 96-212), cash and medical assistance is distinct from social services. Similarly, if Congress had intended that SLIAG funds be used for social services, it clearly knew how to make its intent known. We see no indication in the legislative history that Congress intended SLIAG funds to be used to reimburse the costs of social services. We note that eligible legalized aliens are not barred from most Federal social service programs, e.g., those listed in section 245A(h)(4) of the INA.

Second, the definition is consistent with the definitions of public assistance found in social science literature. The *Encyclopedia of Social Work* (under the section on public assistance and supplemental security income) defines public assistance as "those income maintenance programs administered by welfare departments, based on need and the imposition of a means test rather than on right" (National Association of Social Workers (NASW), 1976). The *Dictionary of Social Work*, (NASW, 1987), defines public assistance as "a government's provision of minimum financial aid to persons who have no other means of supporting themselves."

Third, the definition provides leeway to States by encompassing types of public assistance other than cash or medical assistance. "Other assistance" is not a fourth category of allowable costs; rather, it is a subset of public assistance. It includes (1) assistance, other than cash or medical, which meets the definition of "public assistance" and provides for the basic subsistence needs (e.g., food, clothing, or shelter) of needy individuals; or (2) activities which are required as a condition of participation in a cash or medical assistance program, such as employment services or job

training. Generally, we believe that State and local costs incurred under programs providing housing assistance directly to eligible legalized aliens are allowable under the definition of public assistance. However, programs providing assistance or subsidies to landlords or other providers of housing would generally not be considered public assistance unless (1) the benefits of the assistance/subsidy were directly traced to an eligible legalized alien, and (2) the benefits were provided under a program which otherwise met the criteria for a program of public assistance.

We have included in the definition of public assistance those employment services that are required as a condition of participation in a public assistance program. We believe this is appropriate because such services are an inextricable cost of the public assistance program. It is on this basis that we concluded that they should be allowed under the category of public assistance. On the other hand, employment services that are not required as a condition of participation in a public assistance program do not provide for subsistence needs and therefore cannot be considered to be public assistance. Consequently, we are unable to find any statutory basis on which to allow reimbursement for employment services per se.

State and local costs incurred in providing maternity care to eligible legalized aliens would be allowable as long as the program meets the requirements listed in the Act and this regulation for a program of public assistance or public health assistance.

Comment (Fee for Service)

A number of commenters asked that county or state run hospitals and clinics which utilize sliding scale payment programs be eligible to receive reimbursement under the provisions of SLIAG.

Response

As long as such programs or services meet either the definition of public health assistance or public assistance, expenditures by State or local governments would be reimbursable. We have modified the definition of public assistance to include programs which use a sliding scale payment based on income and otherwise meet the criteria for public assistance. We believe that receipt of services at reduced fees determined on an individual basis for each eligible legalized alien based on his/her income and resources is sufficient indication

that the service is provided to "needy individuals," as specified in the Act.

Public Health Assistance

Section 204(j) of the Act provides that the term "programs of public health assistance" means programs which receive funding from units of State or local government, are generally available to needy individuals residing within the State, and provide public health services. An illustrative list of public health services is provided in section 204(j)(3) of the Act—immunizations, testing and treatment for tuberculosis and sexually transmitted diseases, and family planning services. This list is incorporated in the definition of public health assistance in § 402.2.

Given the specificity in the Act, we do not believe further regulatory clarification is necessary. Consequently, we have not changed the portion of the regulation governing public health assistance, which closely parallels the Act.

Comment (Define Scope of Public Health Services)

Several commenters requested that we define the scope of services that are allowable under the public health assistance category. Comments included questions about supportive services such as social services, translation services, transportation, health monitoring, etc. Some commenters requested that a specific list of allowable services be provided. Others wanted to assure that drug and alcohol programs and mental health programs are included.

Response

We have chosen not to be specific in naming programs that are allowable under the public health provisions of the Act. Those programs which meet the definition of public health assistance in section 204(j)(3) of the Act and Subpart A of the regulation are allowable. To the extent that mental health and drug and alcohol programs are part of the State's public health program, we believe that they would be allowable. However, public health services provided solely to eligible legalized aliens, i.e., services that are not generally available, would not be allowable.

Comment (AIDS Confidentiality)

We received several comments concerning the issue of confidentiality in the testing for AIDS. Many indicated that local programs do not currently request name identification in testing the general population. Some commenters expressed concern that mandatory testing requirements would

conflict with state regulations requiring strict handling and disclosure of positive test results.

We also received comments which expressed concern that State systems would incur substantial costs which would not be reimbursable under SLIAG. Believing that many aliens would go to testing sites prior to application for status adjustment to assure that they are not HIV-positive, several commenters noted that this would increase demand on these public clinics and requested that funds be made available for increasing the capacity of these clinics. Noting the possibly devastating consequences of a positive test and highly developed State systems for dealing with HIV-positive clients, many commenters feared that the influx of aliens being tested would tax these systems and deteriorate the quality of services being provided, absent additional funding.

Response

Beginning December 1, 1987, screening for AIDS antibodies is a mandatory part of the medical examination required by INS for legalization. The imposition of this requirement is outside the scope of this regulation. (See amended requirements for the medical examination of aliens, 52 FR 32540, August 28, 1987.)

While we are sympathetic to the concern expressed by commenters, the Act, as noted above, specifies the categories of activities and services for which SLIAG funds can be used. We note that the Federal (non-SLIAG) funds available for screening and counseling will more than double this year relative to last year.

The Act provides that the medical examination required of aliens seeking to adjust status under the legalization program will be at the alien's expense, which INS and the Department have interpreted by regulation to mean at no cost to the Federal government. Therefore, this regulation provides that any State or local costs associated with the medical examination required for legalization are not reimbursable under SLIAG. Because States will not be claiming costs incurred as part of the medical examination, there is no requirement under the Act or this regulation to identify ELA status. We therefore conclude that there is no confidentiality problem associated with the mandatory screening of legalization applicants that need be addressed by this regulation. The regulation provides States with flexibility in establishing SLIAG-related costs associated with follow-up and treatment associated with

AIDS provided to eligible legalized aliens.

The cost of AIDS testing for eligible legalized aliens (or aliens applying for adjustment of status under section 245A of the INA) outside the context of the medical examination is reimbursable provided that the program under which testing is conducted meets the definition of public assistance or public health assistance.

Comment (Medical Examination Providers)

A number of comments suggested that we name community and migrant health centers and county and public hospitals as certified providers of the INS-required medical examination. Other comments suggested that these same centers be allowed to receive cost reimbursement from SLIAG.

Response

It is not within our jurisdiction or authority to designate civil surgeons or to certify health care facilities for the purpose of the INS examination. This authority rests with the INS.

To the extent that services provided by these centers fall within the scope of public assistance or public health assistance, as defined in the Act and this regulation, reimbursement of State and local government expenditures is allowed for costs associated with providing such assistance to eligible legalized aliens.

Comment (Limitation on Funds Used for Abortion)

We received some comments concerning the exclusion of reimbursement for abortion. Some commenters requested our basis of authority for imposition of such a restriction. Others stated that they found no basis for the exclusion in the Act.

Response

We have retained this restriction in the regulation. Evidencing its intent to limit Federal funding of abortions, Congress imposed this restriction on overall HHS appropriations, including the funding bill for FY 1988 (section 1(h) of Public Law 100-202).

Although the Hyde Amendment is not applicable by its terms to SLIAG funds, this rule conforms to rules governing other programs administered by HHS and carries out Congress' intent to limit Federal funding of abortions.

Educational Services. Section 204(c) of the Act provides that States may use SLIAG funds to make payments to State educational agencies for the purpose of assisting local educational agencies in

providing educational services for eligible legalized aliens. The Act provides that the definitions and provisions of the Emergency Immigrant Education Act of 1984 (EIEA) (20 U.S.C. 4101), with several modifications to encompass assistance to adults, apply to States' use of SLIAG funds for educational services.

In response to the many comments received concerning the provision of educational services to eligible legalized aliens with SLIAG funds, we have made a number of changes and clarifications to the proposed rule. We believe that these changes better implement Congressional intent to use existing administrative mechanisms and to establish a limit on the amount of SLIAG funds that may be paid for educational services.

The final rule clarifies that the EIEA applies to the provision of all educational services receiving SLIAG funds, including services to adults.

Our regulation allows SLIAG funds to be used for the following activities with respect to students enrolled in elementary or secondary school:

- supplementary educational services, including: English language instruction, bilingual services, and special materials and supplies necessary to enable eligible legalized aliens to achieve a satisfactory level of performance in school;
- additional basic instructional services and attendant costs directly attributable to the presence of eligible legalized aliens in the school district, including classroom supplies, overhead costs, costs of construction, acquisition or rental of space, and transportation costs.
- essential in-service training for personnel who will be providing supplementary educational services or additional basic instructional services.

(This list of activities is taken directly from section 607 of the EIEA (20 U.S.C. 4101 et seq.) and U.S. Department of Education regulations implementing the EIEA (34 CFR 581.50).)

After review of the comments received in response to the proposed rule, we concluded that the intent of the incorporation of EIEA into SLIAG was, among other things, to provide funds to offset part of the costs of providing to adults the same types of services available to children under EIEA. It was also clearly the intent of Congress to avoid establishing new administrative mechanisms under SLIAG. The Adult Education Act, as amended in 1984 (20 U.S.C. 1201 et seq.), provides for educational services for adults

comparable to those provided for children under EIEA.

Accordingly, for adults not enrolled in elementary or secondary school, the regulation permits the use of SLIAG funds for activities authorized under the Adult Education Act (20 U.S.C. 1201 et seq.) as in effect on November 6, 1986. These activities include the following:

- instruction in basic skills to enable adults to function effectively in society (including the ability to speak, read and write the English language);
- instruction leading to the equivalent of a certificate of graduation from a school providing secondary education;
- instruction for adults with limited English proficiency;
- instruction in citizenship skills; and
- ancillary services.

Vocational education services are not authorized under the Adult Education Act and may not be paid for with SLIAG funds.

The regulation also incorporates the provision of the Act that allows SLIAG funds to be used to provide the English language and citizenship skills instruction necessary for an ELA who is required to meet the conditions imposed by section 245A(b)(1)(D)(i) of the INA for adjustment to permanent resident status.

Section 204(c)(1)(C) of the Act specifies that payments for educational services are to be made "to State educational agencies for the purpose of assisting local educational agencies . . . in providing educational services for eligible legalized aliens." Further, EIEA provides for the allocation of funds from the State educational agency (SEA) to local education agencies (LEAs). We believe that Congress clearly intended to apply this administrative mechanism to State and local governments' use of SLIAG funds for educational purposes. The report on the bill by the House Education and Labor Committee cites Congressional intent to use EIEA to provide "an already existing administrative structure for the provision of this assistance" (H.Rpt. 99-682, p. 17).

Additionally, section 204(c)(3)(C) permits State educational agencies to provide educational services for adults, as defined in this regulation, through local educational agencies and public and private non-profit organizations, including community-based organizations of demonstrated effectiveness. We have adopted the same administrative mechanism for payments to provide educational services to adults as is used in the EIEA to provide for payments for educational services for students enrolled in elementary and secondary school.

The following is a summary of major comments and our responses to them:

Comment (Applicability of EIEA Provisions)

One commenter contended that the provisions of EIEA should apply only to educational services delivered within the elementary and secondary school system; these provisions, including the \$500-per-person cap limit (see § 402.11), should not apply to educational services delivered outside that system. Another commenter requested that the Department study the definitions and provisions of EIEA to determine their adequacy for SLIAG.

Response

Based on the specific nature of the exceptions made to EIEA by the Act, the Department concludes that it is appropriate and consistent with the intent of Congress to apply all definitions and provisions of the EIEA pertaining to States' use of funds for educational services to other expenditures for educational services which the State claims as SLIAG-related costs, including services provided for adults. The Act replaces the phrase "immigrant children" in the EIEA with "eligible legalized aliens" (including such aliens who are over 16 years of age). . . ." thereby encompassing adults. Also, section 204(c)(3)(B) of the Act makes a specific exception for adults in applying the threshold for payment under section 606(b) of the EIEA. The Act requires the application of the EIEA provisions when the State uses SLIAG funds "for the purpose described in paragraph (1)(C). . . ." This paragraph provides for the provision of educational services to eligible legalized aliens generally, not just to eligible legalized aliens enrolled in elementary or secondary school.

We therefore concluded that the clear intent of the Act is to apply to adults as well as children the provisions and definitions of the EIEA.

Comment (Need for Language Instruction)

Several commenters objected to the assertion in the proposed rule that, "Many aliens will speak English when they enter the country or will have acquired English when they enter the country or will have acquired English language skills during the time they were here." The commenters generally expressed concern that the Department is overestimating the level of English language ability among ELAs and underestimating the need for English language training. One commenter also

said that even those ELAs who know English are likely to need history and government classes in order to qualify for permanent residency.

Response

The statement in question appears in the preamble in a general discussion of factors which may affect the need for SLIAG funding for educational services. The limitations the rule places on use of SLIAG funding for this purpose are based entirely on the Act, not on any projections of need made by the Department.

Comment (SAWs)

A number of commenters expressed concern over preamble language that indicated special agricultural workers (SAWs) would have less need for English language instruction, since they do not have to meet English proficiency requirements to qualify for permanent resident status. (Those granted status adjustment under section 245A and 210A do have to meet these requirements.) All of the commenters who addressed this section of the proposed rule advocated giving SAWs equal access to English language training. Some also mentioned specifically history and government instruction designed to help ELAs meet the citizenship skills requirement. Most of the comments focused on the need for English language training to obtain better employment and assure self-sufficiency. Some commenters contended that the need for English language instruction actually is greater for SAWs than for those granted adjustment of status under section 245A. Other commenters pointed out that SAWs will have to meet English language proficiency and citizenship skill requirements to obtain citizenship and, therefore, should be allowed access to that training now. One contended that all ELAs must be afforded access to educational services needed to meet the requirements of permanent resident status and naturalization and that these services must be sufficient to enable them to progress toward citizenship.

Response

The fact that SAWs are not required to meet the conditions in section 245A(b)(1)(B)(i) of the INA does not mean that they are ineligible for English language training or citizenship skills training paid for with SLIAG funds. The final regulation allows States to use SLIAG funds for any services authorized under the Adult Education Act, which includes English language instruction and citizenship skills training to all

ELAs not enrolled in elementary or secondary school.

Comment (Providers of Educational Services)

Several commenters sought more specificity concerning acceptable providers of educational services or to assure the involvement of specific groups in the planning process. One commenter requested that the Department specify public libraries and academic institutions as allowed providers for educational services. Two commenters asked that qualified designated entities (QDEs) be specified as allowed service providers. One commenter requested that on-site, work-related English-as-a-second-language classes provided by agricultural organizations be allowed. Still another advocated limiting funds for educational services to "recognized courses of study" and requiring involvement of professional language instructors in developing curricula and providing English language instruction.

Response

By incorporating the provisions of the EIEA, the Act allows local educational agencies to receive payment for services provided to ELAs enrolled in both public and non-public schools, subject to the same limitations included in the EIEA. Additionally, the Act allows State educational agencies to provide educational services for adults through "local education agencies and other public and private non-profit organizations, including community-based organizations of demonstrated effectiveness." The Act also specifies categories of educational services for which payment can be made under SLIAG, and the final rule provides further definition of those services. Within these parameters, the Department believes that it is appropriate for States to decide which educational services should be provided and which agencies or organizations should be utilized in providing them. Further, it seems clear that by specifying a broad range of allowed service providers Congress intended to allow States a considerable amount of leeway in making determinations about appropriate service providers. We do not believe it is appropriate to specify other criteria in regulation.

Comment (Educational Materials)

One commenter asked that educational materials be specified as allowable educational services expenses under SLIAG.

Response

The cost of educational materials may be allowable to the extent that they are necessary to provide educational services to eligible legalized aliens. The EIEA, which is incorporated into SLIAG, authorizes "special materials and supplies" for supplementary education services. Further, EIEA regulations specify "classroom supplies" as an allowable item under the cost of "basic instruction." Under the Adult Education Act, States may provide instructional materials.

Comment (Literacy Training)

Another commenter sought to include literacy as well as spoken English as an English language skill allowable under SLIAG as an educational service. The commenter contended that being able to read and write basic English is essential to fulfill basic citizenship responsibilities.

Response

We agree that English language skills include literacy. This interpretation is supported by the legislative history. The House Education and Labor Committee Report (H.Rpt. 99-682) refers to "English language instruction and other literacy programs." Literacy training is authorized under the Adult Education Act and is therefore an activity for which payment may be made with SLIAG funds, subject to the restrictions noted in § 402.11 of this regulation.

Comment (Level of Language Proficiency)

A number of commenters asked the Department to establish or clarify the level of English language ability required for ELAs granted status adjustment under section 245A to attain permanent resident status. One commenter suggested that the required level of proficiency should be set at a relatively low level, with funding to be available for more extensive training. Some commenters also asked about standards for knowledge of history and government to meet the citizenship skills requirement. Three advocated that States be allowed to approve courses through which an ELA "satisfactorily pursuing a course of study" could meet the language and citizenship skills requirements, and one asked why approval by the Attorney General is required for courses of study.

Response

The English language and citizenship skills requirements for permanent resident status under section 245A are entirely within the purview of the

Immigration and Naturalization Service. The Department has no authority to set standards or approve service providers. We have, however, forwarded comments relevant to these issues to the INS for its consideration.

Additionally, we note that INS regulations at 8 CFR 245a.3(b)(5) do specify that a course of study satisfies the requirement "if (i) it is sponsored or conducted by an established public or private institution of learning recognized as such by a qualified State certifying agency or by an institution of learning approved to issue Forms I-20 . . . or by a qualified designated entity within the meaning of section 245A(c)(2) of the Act, and (ii) the course materials for such instructions include textbooks published under the authority of section 346 of the Act."

SLIAG funding is not limited to courses approved by the Attorney General, and such approval does not affect chances for permanent residency if the individual ELA meets the INS standard for English language proficiency and citizenship skills. However, for individuals who plan to meet these requirements by being enrolled, and making satisfactory progress, in a course, States should be aware that only enrollment in a course approved by the Attorney General will suffice. For further information, States are encouraged to contact their local INS office.

We do not believe that it is necessary for us to set further standards for English proficiency for defining the allowable use of SLIAG funds. The provisions of the Act (including incorporation of the EIEA) sufficiently define Congressional intent in this area. As noted in the section of this preamble relating to § 402.11, "Limitations on Use of SLIAG Funds," the Act already imposes practical limits on the provision of educational services to eligible legalized aliens.

Comment (Basic Instruction)

Several commenters objected to the statement, included in the preamble of the proposed rule, that SLIAG funds are not available for the costs of basic instruction other than the costs of teaching the English-language and citizenship skills required for adjustment to permanent resident status. The commenters refer to another statement in the preamble that lists "additional basic instructional services and attendant costs . . ." as an allowable expense. A related comment asks that the scope of allowable costs be expanded to allow training for a more-than-minimal level of English proficiency and adequate literacy skills.

Additionally, many of the comments concerning the adequacy of the \$500 limit refer to levels of English proficiency needed for employment. (See discussion of \$500 limit under "Limitations on Use of SLIAG Funds," below.) One commenter specifically asked that employment training be allowed as an educational expense.

Response

The scope of services for which SLIAG funds may be paid is limited to those provided for in the Act and this Part. However, in response to the comments, we have clarified that services to eligible legalized aliens enrolled in elementary and secondary school include basic instructional services. This is specifically provided for in the EIEA. We have also included in the definition of educational services for adults those activities authorized under the Adult Education Act, including basic instructional services.

The Adult Education Act does not cover employment training, nor does the final rule allow such activities to be funded under SLIAG as an educational service. We believe employment training falls outside the scope of activities that can be inferred from EIEA or from the exceptions to the provisions of EIEA that are included in the Act. We found no evidence in the legislative history of the Act evidencing any intent on the part of Congress to allow SLIAG funds to be used for employment or vocational training.

Comment (Recipient of Funds)

One commenter asked that no State or Federal public school agency or agencies be given the responsibility for overseeing or receiving funds for educational services. Another commenter asked whether it was possible to circumvent the State's department of education and give educational service funds to other groups.

Response

Section 204(c)(1)(C) of the Act authorizes the State "to make payments to State educational agencies for the purpose of assisting local educational agencies . . . in providing educational services to eligible legalized aliens." The Act further provides that "the State educational agency may provide such services through local educational agencies and other public and private non-profit organizations. . . ." We interpret this to mean that all payments for educational services must go through the State educational agency. However, we have defined "State educational agency" to include, when applicable, the

State agency responsible for administering adult education programs under the Adult Education Act. State law and budget procedures would determine who has decision-making power over the use of such funds.

Comment (Application Explanation of Education Allocation)

One commenter sought to have the Department specify English language and citizenship skills training as "an additional State cost resulting from the passage of the Act" and require States to explain in their applications how their proposed use of SLIAG funds shows cognizance of this need. Another commenter asked that States be required to consult with non-profit agencies already providing ESL and citizenship courses.

Response

We do not agree that the cost of providing English language and citizenship skills training is necessarily a cost resulting from the passage of IRCA. We understand from our consultation with State and local education officials that, in many States, English language and basic education services historically have been provided to undocumented aliens. Thus, these costs in all likelihood will be at least in part on-going costs. This regulation does not require a State to report in its application how it plans to spend SLIAG funds. (The estimates to be provided in the application are SLIAG-related costs, not the anticipated level of SLIAG reimbursement or payment.) However, the Act does establish minimum funding for education through the requirement that at least 10 percent of SLIAG funds be spent on each of the three program categories—public assistance, public health assistance, and educational services—if sufficient need exists in these areas. Beyond this requirement, States have discretion as to how funds are allotted among the three categories of allowable uses. We believe it is inappropriate to add further procedural requirements.

Comment (Curriculum Development)

One commenter asked that curriculum development be added to the regulation as a reimbursable educational service.

Response

The EIEA, which is incorporated into SLIAG, allows expenditure for "basic instructional costs" attributable to the student's presence in the area of jurisdiction of the local educational agency. The Adult Education Act permits funding for curriculum

development. Therefore, we agree with the commenter that curriculum development allocable to eligible legalized aliens receiving educational services under SLIAG may be an allowable cost. However, the cost of curriculum development must be apportioned to ELA and non-ELA students and is subject to the requirements in § 402.12.

Comment (Tutoring and Independent Study)

One commenter advocated allowing payment for tutorial educational programs or independent study in addition to formal courses of instruction.

Response

The EIEA, as incorporated into SLIAG, allows expenditures for supplementary services and basic instruction attributable to the student's presence in the school district. These activities could include tutorial or independent study courses offered by the LEA. Additionally, the final rule establishes as allowable educational activities for adults all activities and courses allowed under the Adult Education Act. Therefore, to the extent that tutorial and independent study courses for adults are allowed under that authority, payment for those services could be made under SLIAG.

State Matching Funds

The regulation provides that States may use SLIAG funds for the non-Federal share of Federal matching programs requiring a State and/or local match. We received no comments on this provision.

Limitations on Use of SLIAG Funds

Section 204(f) of the Act provides that payment under SLIAG shall not be made for costs to the extent those costs are otherwise reimbursed or paid for under other Federal programs. We have incorporated that provision in § 402.11 of this regulation as well as in the definition of SLIAG-related costs in § 402.2. We believe that the intent of this provision is to prohibit States from using SLIAG funds for costs associated with public assistance, public health assistance, or educational services to the extent such costs are already being reimbursed or paid with Federal funds.

Implementing section 204(c)(2)(C) of the Act, we have included a prohibition on reimbursement of more than 100 percent of SLIAG-related costs for public assistance, public health assistance, and educational services. The statute does not specify this prohibition for educational services, but we believe that the Department's rules

on administration of grants at 45 CFR Part 74 would not permit reimbursement of more than 100 percent of allowable costs of any type. Further, we believe that the legislative history makes clear that Congress did not intend to set up an entitlement of \$500 for each ELA, but rather intended to provide for actual costs up to the \$500 limit.

We also have prohibited the use of SLIAG funds for reimbursing costs associated with the medical examinations required of aliens who apply for adjustment to lawful temporary resident status. Section 245(d)(2)(C) of the INA states that an applicant must undergo a medical examination "... at the alien's expense." Legislative history indicates clear Congressional intent that the fee for the medical examination be paid by the applicant: "This medical exam offers an ideal opportunity, at no cost to the Federal government, to achieve some basic health objectives" (H.Rpt. 99-682). In this regard, we are interpreting this provision consistent with INS regulations published at 8 CFR 245a.2(i) (52 FR 16212, May 1, 1987), which state that the medical exam must be "... at no expense to the government."

Comment (Testing vs. Treatment)

We received a number of comments requesting clarification on the line of demarcation between testing as part of the examination required for status adjustment (which is not allowable) and follow-up treatment (which is allowable).

Commenters suggested that the skin test in TB screening is part of testing, but the X-ray required subsequent to a positive skin test should be considered part of treatment. Other commenters questioned whether the cost of laboratory work required after blood or body fluids are drawn during the examination could be considered allowable under SLIAG. With regard to AIDS screening, several commenters asked us to clarify the terms testing, treatment, and follow-up. Commenters requested clarification as to when testing stops and follow-up begins in the monitoring and treatment of sexually transmitted diseases.

Response

The Centers for Disease Control (CDC) has determined that an X-ray following a positive skin test is diagnostic and is considered part of the examination, rather than treatment. In its *Guidelines for Medical Examinations of Aliens in the U.S.*—June 1985 (Feb. 1987), guidelines are provided for the physical examination for aliens seeking legalization. The option is provided for

diagnostic testing for tuberculosis utilizing either radiograph (X-ray) or skin test. When *any* reaction to the skin test is noted, the individual must receive an X-ray. Only individuals with "no reaction to the tuberculin skin test can be cleared without a chest X-ray examination."

Likewise, laboratory expenses incurred in running tests required to determine the presence or absence of a disease or condition are part of the cost of the examination. If the examination is being undergone for purposes of adjustment of status under the Act, the costs of that examination are not allowable under SLIAG.

In general, the line between testing for the presence of a disease or condition stops when the disease or condition is confirmed or ruled out. Steps taken to ameliorate or eliminate the disease or condition are considered treatment.

Educational Services

The Act, particularly as it incorporates the provisions of EIEA, establishes a number of limitations on spending for educational services. The procedures and structure adopted for State administration of education funds by incorporating the EIEA into the Act serves both to allocate SLIAG funds among LEAs and other providers of educational services to adults and to limit the amount of SLIAG funds that may be used for educational services. Under SLIAG, SEAs may allocate to LEAs and other providers of educational services in any fiscal year an amount not to exceed \$500 multiplied by the number of ELAs meeting the conditions noted below. (For LEAs which receive funding under EIEA, the amount that may be paid is subject to further restrictions, as noted below.)

The EIEA provides payment on behalf of "immigrant children" born outside the United States who have been enrolled in school for less than three full academic years. The Act instructs us that any reference to the term "immigrant children" shall be deemed a reference to "eligible legalized alien." Therefore, the rule provides that, in calculating the amount that may be provided to LEAs, States may count only ELAs who have been enrolled in elementary and secondary school or other educational services, as defined in this regulation, in the United States for less than three complete academic years.

Furthermore, an LEA may receive SLIAG funds in a fiscal year for costs associated with ELAs enrolled in elementary or secondary school only if at least 500 such eligible legalized aliens are enrolled in the school district or if

such ELAs represent at least 3 percent of enrollment for that fiscal year. This provision derives directly from section 606(b)(2) of the EIEA. The Act specifically provides that this threshold does not apply to adults. Therefore, the regulation provides that all ELAs over the age of 16 not enrolled in elementary or secondary school in that school district but who are receiving educational services may be counted in determining the amount of SLIAG funds that may be paid to a local educational agency or other provider of educational services for adults, as described in section 204(c)(3)(C) of the Act, i.e., public or private non-profit organizations, including community-based organizations of demonstrated effectiveness.

SEAs may distribute money to LEAs or directly to public or private non-profit agencies, including community-based organizations of demonstrated effectiveness, for the purpose of providing educational services to adults. (LEAs also may provide services through such groups.) The SEA may allocate annually to each LEA or other organization providing educational services to adult eligible legalized aliens an amount of SLIAG funds not to exceed \$500 multiplied by the number of ELAs being served by that LEA or other organization, or the actual unreimbursed non-Federal cost of providing the educational services to ELAs, whichever is less. LEAs or other organizations may count only those ELAs to whom they provide services.

In counting the number of ELA children and adults, States and LEAs should remember that only individuals whose immigration status has been adjusted under sections 245A, 210 or 210A of the INA are countable. In particular, U.S.-born children of ELAs are citizens, not ELAs, and may not be counted for purposes of computing SLIAG allocations to LEAs.

Section 606(b)(3) of EIEA requires the Department of Education to reduce the amount of a State's EIEA grant for a fiscal year by amounts made available under other Federal programs for the same fiscal year for the same purpose. However, EIEA provides one exception to this general rule. If "the amount available for expenditure" in a State's grant under another Federal grant program, e.g., SLIAG, takes into account the amount of a State's EIEA grant, no reduction will be made by the Department of Education in the EIEA grant.

Because States, rather than the Federal government, control the timing of payments for educational services under SLIAG, we concluded that it

would be unduly burdensome for States to have their EIEA grants reduced based on their payment of SLIAG funds to local educational agencies. Further, the reduction in EIEA funding would have made State and local planning difficult. Consequently, in considering the amount of SLIAG funds that may be paid to a local educational agency on behalf of eligible legalized aliens enrolled in elementary and secondary school, the State must consider the amount of the EIEA grant to such agency that is attributable to eligible legalized aliens in the school district.

Comment (\$500 Cap)

A number of commenters expressed concern that the \$500 per ELA limit on the payment of SLIAG funds for educational services was too low. Several commenters provided calculations to demonstrate that the cost of providing English language instruction will be considerably higher than the \$500 maximum. Many of these comments included the recommendation that the \$500 cap not be applied. One commenter recommended that the \$500 cap be applied only to services provided within the elementary and secondary school system, not to those provided to adults. Still another simply stated that more funding is needed for education.

However, one commenter stated that the \$500 cap probably would suffice.

Response

Section 204(c)(3) of the Act incorporates "the definitions and provisions" of EIEA. The legislative history clearly indicates that Congress specifically intended the \$500-per-person allocation amount in EIEA to apply as a cap on the use of SLIAG funds for educational services for both children and adults. The House Education and Labor Committee Report states, "The effect of this provision [incorporating EIEA into SLIAG] is to place a \$500 cap on the Federal contribution for each eligible child or adult" (House Report 99-682). Concluding that the \$500 limit was clearly the intent of Congress, we have included that limit in the final regulation.

Comment (Application of \$500 Cap)

Several commenters recommended applying the \$500-per-person limit on expenditures for education services as an aggregate figure for all persons receiving these services, rather than as a limit for each individual's services. This would allow States the flexibility to use SLIAG funds to meet different levels of need. Other commenters suggested that the limit on educational expenses be

determined by multiplying the \$500-per-person limit by the total number of ELAs, whether or not they receive services. Another commenter recommended applying the \$500 cap on an individual basis, but separately for each kind of service, e.g., \$500 for English language instruction, \$500 for history and government instruction, etc. Still another commenter recommended a spending limit for educational services based on a cumulative aggregate enrollment multiplied by \$500 so that "unused" allowable funds could be carried over to the next year. Finally, two commenters sought clarification on whether the \$500 limit is annual, and one asked how a year will be defined for purposes of applying the cap.

Response

After examining the comments and the provisions of the EIEA that are incorporated into SLIAG, we have concluded that the \$500 amount serves both as an allocation mechanism and a limitation on Federal expenditures. The State educational agency may, generally speaking, allocate to an LEA or other organization providing services an amount up to \$500 multiplied by the number of countable ELAs enrolled in allowable educational services or the actual, unreimbursed non-Federal cost of providing such services, whichever is less. Within this allocation, LEA's or other providers of educational services may vary the amount of SLIAG funds applied to individual eligible legalized aliens, provided that the aggregate payment to that LEA or other provider does not exceed the amount described in the regulation.

The Department agrees that the \$500 limit is an annual one. However, as noted in response to other comments, SLIAG payments must be associated with those ELAs, both children and adults, who have attended U.S. schools for less than three full academic years.

We have not adopted the suggestion that States be allowed to determine the amount of SLIAG funds that may be paid for educational services by multiplying \$500 by the total number of eligible legalized aliens residing in the State, regardless of whether those aliens were receiving educational services. The EIEA provides funds on behalf of "immigrant children" enrolled in school. We believe that the same provision would apply to adults.

We have not adopted the recommendation that we allow a separate ceiling for various types of educational services. To do so would defeat the clear intent of Congress to impose a ceiling of \$500 on SLIAG

payments for each eligible legalized alien receiving services.

Comment (Subtracting Other Federal Funds Under EIEA)

Several comments related to the provision in section 606(b)(3) of the EIEA, incorporated into the Act, that requires funds from other Federal programs for the same purpose and relating to immigration status to be deducted from the \$500-per-person spending ceiling. One commenter advocated not counting Adult Education Act funding in the calculation of maximum SLIAG funding amounts for educational services, if a State already is spending all of its Adult Education Act funds on individuals who are not ELAs. Another commenter simply advocated not reducing the level of available funding through such an offset. Still another objected to offsetting any expenditures from other programs because no other program is "for the same purpose" as SLIAG, but requested that any programs that are to be offset be published in the *Federal Register* for comment before the list becomes final. Finally, one commenter contended that Congress intended to offset only assistance provided because of immigration status.

Response

As noted above, irrespective of whether the offset provision of EIEA is incorporated into SLIAG, funds from SLIAG and EIEA must "offset" each other by virtue of the EIEA provisions regarding EIEA funds. If States were not required to consider EIEA funds in determining their SLIAG allocations for educational services, the Department of Education would have to reduce their EIEA allocations to compensate for SLIAG payments. As discussed above, we believe that requiring States to consider EIEA payments in determining SLIAG allocations is administratively the simplest approach to carrying out the "offset" requirement of the EIEA.

For example, had we not required that the EIEA grant be taken into account, a State that provided \$500 per eligible legalized alien in SLIAG funds to a local educational agency would have lost that portion of its EIEA grant that was based on the enrollment of ELA children for whom SLIAG payments were made (about \$75 per child). Under this regulation, the maximum SLIAG payment to the local educational agency for an ELA enrolled in elementary or secondary school would be roughly \$425 (the \$500 statutory maximum minus the amount of EIEA funds the LEA receives because of the enrollment of an ELA child who also is counted as an

"immigrant child" in the EIEA program). In either case, the amount of Federal funds available to the local educational agency for the purposes of EIEA is the same—\$500.

The amount of EIEA funds to be subtracted from an LEA's allocation of SLIAG funds to determine the maximum SLIAG payment would be determined by multiplying the number of ELAs enrolled in elementary and secondary school who also are covered under EIEA by the EIEA allocation for non-refugee children. We will supply the EIEA allocations per non-refugee child to States based on information supplied by the U.S. Department of Education.

Because Department of Education funds under EIEA are distributed based only on students in elementary and secondary school, no offset would be required against spending for adult educational services. However, the SLIAG prohibition against claiming reimbursement for costs already reimbursed under another Federal program does apply.

Comment (3 Year Limitation)

A number of commenters recommended that the provision of the EIEA that limits assistance to those children who have attended school for less than three full academic years not apply to SLIAG. Several commenters maintained that this restriction, in effect, will prohibit assistance to almost all children above the second or third grade because they will have been in this country for more than three years. Several commenters contended that Congress intended for all ELA children to be eligible for assistance. One commenter maintained that Congress did not intend for the three-year limit to apply to SLIAG. However, another commenter pointed out that we were being inconsistent in applying the three-year limitation to children and not to adults, and advocated that we establish a consistent standard. Some commenters contend that the provision establishes onerous reporting and tracking requirements. On the other hand, one commenter advocated specifying in the regulation that the three-year limit on school attendance does apply to ELAs receiving educational services.

Response

Section 204(c)(3) of the INA applies the definitions and provisions of the EIEA to payments made for educational services. The Act instructs us to substitute the term "eligible legalized aliens" (including such aliens who are over 16 years of age) for the term "immigrant children." We concluded

that the most appropriate reading of this provision is to retain the applicability of the remainder of the definition of the term "immigrant children," viz., that they be born outside the United States and have been enrolled in school in the U.S. for less than three full academic years. This reading is consistent with the Act's reference to the "definitions" of the EIEA. This reading also provides consistent treatment in the provision of Federal funds to State educational agencies with respect to aliens. Finally, this reading facilitates the clear Congressional intent that the administrative mechanism of the EIEA be used for SLIAG funds used for educational services. If we were to adopt a different time period for the counting of eligible legalized aliens, it would be more difficult for States to use the EIEA mechanism, which is geared to immigrant children's first three years in school.

It is important to alleviate the apparent confusion on the part of some commenters between the questions of whether an ELA is eligible for services and whether those services can be funded through SLIAG. Nothing in the Act or this regulation restricts access by ELAs to any educational service for which they otherwise qualify. At issue only is the extent for which SLIAG funds can be used to make payments to LEAs or other service providers.

Congress provides time-limited transitional assistance to LEAs with respect to immigrants in the school district through several programs. For example both the EIEA itself and the refugee education assistance programs provide assistance for the first several years alien children covered by these programs are enrolled in U.S. schools. In addition to limiting the duration of time for which payment can be made with respect to an alien child, neither EIEA nor the refugee education programs were designed to cover the entire cost of providing education to immigrant children. We see no indication in the legislative history that Congress intended to provide considerably more extensive assistance to State and local governments with respect to eligible legalized aliens than for other aliens. Thus, we have provided by regulation that, for purposes of calculating the maximum SLIAG payment to an LEA or other service provider, only eligible legalized aliens who have been enrolled in school in the United States for less than three full academic years may be counted. (This is the same time limit as is applied by EIEA.)

One commenter pointed out that it is inconsistent to apply the limitation to

children and not to adults. We agree, and have applied the three-year limitation to adults as well as to children. We believe this interpretation is inescapable when viewed in the context of the Act's application of EIEA's provisions to adults and children. Further, we note that Congress clearly intended to use the existing EIEA structure to avoid the need to establish new administrative mechanisms. Adopting a different time frame for ELAs than for "immigrant children" would thwart that intent.

The three-year period refers to enrollment in a course of instruction. Thus, the final rule addresses the concerns raised by a number of commenters who pointed out that even ELAs who have been in the U.S. for five or more years may not speak English. These ELAs can be served unless they already have accessed instructional programs in the United States for a period equal to three complete academic years. Any previous enrollment by an ELA in an instructional program in the United States must be counted against the three-year maximum to establish the amount of time the student is eligible for educational services under SLIAG.

Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987

Section 204(a)(1) of the Act appropriates funds for SLIAG for fiscal year 1988 and for each of the three succeeding fiscal years. We interpret the Act as providing funds to meet costs incurred by State and local governments beginning in FY 1988, notwithstanding the fact that the INS began taking applications for legalization in FY 1987. However, we believe that two exceptions to the general rule that SLIAG funds may be used only for costs incurred in FY 1988 and succeeding fiscal years are warranted.

First, the regulation permits States to use SLIAG funds to reimburse costs closely associated with the implementation of the SLIAG program, e.g., administrative start-up costs, incurred between November 6, 1986 and September 30, 1987. We believe that it was Congress' intent that State procedures and fund accounting mechanisms be in place early in FY 1988. We expect that some States incurred planning and administrative costs in FY 1987.

Second, the regulation allows States to use SLIAG funds to reimburse otherwise allowable costs incurred in fiscal year 1987 (but after November 6, 1986) for providing public health assistance (1) to individuals whose status has been adjusted under section 245A or 210 of the INA and (2) to

individuals applying to become eligible legalized aliens under section 245A, but not under section 210, of the INA. Section 204(c) of the Act extends reimbursement of public health costs to aliens applying for status adjustment under section 245A of the INA. Recognizing that aliens would be applying for status adjustment beginning on May 5, 1987, we believe the Act contemplates the reimbursement of State and local costs associated with providing public health assistance to those applying, and to those whose status is subsequently adjusted, under section 245A. Since the Act limits the extension of public health assistance to those who are adjusting under section 245A, we do not believe costs associated with those applying under section 210 are permissible uses of SLIAG funds.

Comment (Start-Up Costs)

One commenter sought clarification as to whether planning and administrative costs incurred by departments of public welfare, public health, and education before October 1, 1987, are allowable. Another sought assurance that local school districts will be reimbursed for developmental and administrative start-up costs, and that such reimbursement would be allowed retroactively for expenses incurred in FY 1987.

Response

We interpret the Act to allow administrative costs closely associated with the implementation of SLIAG, i.e., administrative start-up costs, incurred after November 6, 1987. This would include administrative costs incurred not only by the agency administering and dispensing SLIAG funds but also by agencies and local governments involved in providing SLIAG-related services.

The regulation permits reimbursement for allowable SLIAG administrative costs incurred subsequent to November 6, 1986, the date of enactment. However, reimbursement for program administrative costs incurred prior to October 1, 1987 are limited to those incurred for public health services. Program administrative costs for public assistance and educational services incurred before that date are not allowable because, by definition, no program services subject to SLIAG payment or reimbursement could have been made prior to October 1, 1987 for those activities.

We do not believe it is appropriate for us to interject ourselves into State decisions concerning distribution of resources among allowable activities by mandating that certain expenses be

reimbursed, e.g., developmental and administrative start-up costs of local school districts.

Comment

A number of comments were received regarding the allowability of reimbursement for administrative expenses incurred in FY 1987 from FY 1988 funds. A number of commenters supported the Department's decision to allow such costs to be reimbursed. One commenter requested clarification as to whether reimbursement would be allowed for planning and administrative costs by State departments of health, welfare, and education, or whether these reimbursements were allowed only for planning and administration by the State agency. One commenter requested that funds be available for developing tracking systems to identify eligible aliens within public assistance programs prior to October 1, 1987.

Response

Planning and administrative costs which are incurred by States prior to October 1, 1987 for the implementation of SLIAG are allowable under the regulation. This includes SLIAG administrative costs incurred by State and local program agencies, e.g., departments of health, education, and welfare. The costs of developing tracking systems in FY 1987 to identify ELAs receiving assistance generally would qualify as SLIAG administrative costs.

Subpart C—Administration of Grants

General Provisions

The final regulation applies the HHS regulations governing the administration of grants, 45 CFR Part 74, to SLIAG funds. These regulations apply to all grant awards issued by the Department, except those statutorily designated as block grants. We received no comments on this provision.

On March 11, 1988, twenty-four Federal agencies will publish a Presidentially-directed, government-wide "common rule," which will supersede and replace agency regulations such as 45 CFR Part 74, which implements OMB Circular A-102. HHS' adoption of the "common rule" will cause all references to Part 74 to change to 45 CFR Part 92, and necessitate a subsequent amendment to this regulation, conforming any redundant or inconsistent grants administration provisions in Subpart C to the new government-wide "common rule."

Fiscal Control

States must have fund accounting procedures in place which allow SLIAG funds to be traced from drawdown to allowable expenditures under this Part. We are not requiring that a State or recipient trace SLIAG funds from drawdown to an expenditure to or on behalf of individual, identifiable eligible legalized aliens. Rather, we are requiring that States trace SLIAG funds from drawdown to disbursement to a program or activity in which allowable SLIAG-related costs in a fiscal year at least equal the amount of SLIAG funds provided to the program or activity in that fiscal year.

Additionally, regulations at 45 CFR Part 74 require that costs charged to a program be reasonable, allowable, and allocable. For example, the cost of a Spanish-English translator would have to be prorated over the entire Spanish-speaking clientele of a public health office. Those costs could not be charged solely to SLIAG. Costs charged to SLIAG also would have to meet the other criteria of "SLIAG-related costs."

We developed the fiscal control procedures after extensive consultation with State officials and representatives from other levels of government. These individuals raised concerns about (1) the establishment of onerous reporting and tracking requirements, a problem that Congress clearly sought to avoid, and, (2) in some public health situations, the difficulty of tracking expenditures to a specific individual and the possible deterrent effect such tracking might have on those seeking services.

The regulation allows for cost determinations based on statistically valid sampling procedures to address these concerns. States may use any of the fiscal control procedures described in Subpart C of the regulation to track costs. States may, but need not, use the same procedure for each recipient of SLIAG funds or for each program or activity that receives SLIAG funds. We recognize appropriate methods for tracking costs may differ among recipients, programs and activities. For example, the appropriate method for fiscal control chosen by the State may be affected by such factors as whether a particular recipient serves a large alien population, current established methods of accounting, etc. For costs associated with public assistance, States are permitted to demonstrate the amount of their SLIAG-related costs: (1) By determining the amount of funds actually provided to specifically identifiable eligible legalized aliens (as is currently done for refugees under the cash and medical assistance portion of

the Refugee Resettlement Program), or (2) by determining the amount associated with eligible legalized alien participation through the use of a statistically valid sample of an assistance program's caseload. We have not included the use of population ratios (see next paragraph) for determining SLIAG-related costs for public assistance programs. We believe that the public charge provision of the INA and the deterrent effect of that provision on ELAs' participation in such programs, makes use of such a methodology for public assistance programs inherently suspect.

For costs associated with public health assistance, States are permitted to demonstrate the amount of their allowable SLIAG-related costs (1) by using either of the above two methods or (2) by multiplying the ratio of the number of eligible legalized aliens in a service population to the total service population by the costs associated with public health activities that are reimbursable under SLIAG. For example, if 5 percent of the State's population were eligible legalized aliens, we would accept that 5 percent of the costs of public health assistance were associated with eligible legalized aliens.

States may also demonstrate SLIAG-related costs by using other reliable methods of estimation, subject to Federal review. We recommend that States consult with the Department before implementing an alternative method.

The proposed rule did not prescribe detailed methods for calculating SLIAG-related costs for educational services. The preamble to the proposed rule indicated that States must be able to demonstrate that educational services provided are predominantly associated with eligible legalized aliens. In response to comments received on the proposed rule, we have made several modifications in the final rule to provide greater guidance regarding the establishment of SLIAG-related costs for education.

The final regulation requires that States be able to demonstrate that the amount of SLIAG funds paid to local educational agencies and other providers of educational services for adults in a fiscal year does not exceed the limits described in § 402.11(e) of this regulation and that the services provided to eligible legalized aliens were allowable under the Act and this regulation.

Comment (Actual Costs)

Several commenters advocated two changes in fiscal control procedures to ensure that counties receive

reimbursement adequate to cover actual expenses. First, commenters recommended that public assistance and public health cost determinations be based only on actual expenditure data or on the actual number of ELAs multiplied by the average cost per ELA. Statistical sampling of caseload would not be permitted.

Second, the commenters sought to add a requirement that States must reimburse counties based on actual data if the counties maintain such records. Some commenters advocated requiring States to track actual costs, rather than estimating costs based on statistical samples or, for public health, population ratios. Yet, another commenter supported having the option to use actual or statistically derived cost figures.

Response

Consistent with the proposed rule, the final rule requires States to determine the allowability of expenditures for each recipient of SLIAG funds. States may use any of the fiscal control procedures described in Subpart C of the regulation to determine costs.

As discussed above, we allow determination of SLIAG-related costs based on statistically valid sampling to address concerns raised during consultation with State officials and representatives from other levels of government.

Certainly, States have the option to establish actual costs by associating costs with specific, identified eligible legalized aliens. We expect that most State and local governments will select this option for the programs in which it is feasible and appropriate. We would expect States to use the best available data to determine SLIAG-related costs. However, because the State is the grantee in the SLIAG program and is responsible for administration of the grant funds, we have sought to avoid interjecting the Department into State decisions regarding how to administer SLIAG. Consequently, we have not revised the final rule to accommodate these suggestions.

Comment (Allowable Costs)

One commenter advocated establishing specific parameters and definitions for allowable costs.

Response

The final rule does provide specific guidance on establishing SLIAG-related costs. We have attempted to provide such guidance in a way that provides States with flexibility and that doesn't add restrictions unintended by

Congress. We also have tried to answer in this preamble specific questions raised by States and by others. States that have specific questions concerning allowable costs should consult us.

Comment (Cost Calculation)

Several commenters advocated various methods for calculating costs under SLIAG. One of the commenters, who advocated allowing reimbursement for programs of public assistance which do not require applicants to meet specified income or resource requirements, recommended an alternative method of cost calculation for these programs involving "a valid statistical ratio based on demographic data." Contending that eligible legalized aliens will need more health services than other groups, one commenter suggested that States be allowed to calculate public health costs by doubling the ratio of eligible legalized aliens to State population.

Response

The final rule includes procedures which will determine SLIAG-related costs in a manner acceptable to us without requiring States to institute burdensome tracking and reporting procedures. The proposed rule outlined three methods of calculating public health assistance costs, involving varying degrees of specificity in tracking procedures. A State may use any of these methods which it believes most accurately reflect its actual costs or may develop an alternative method.

The rule allows States to use alternative methods for cost calculation if the alternative method provides a valid measure of SLIAG-related costs. These alternative methods are subject to Federal review. Although we are not requiring prior Federal approval before use of an alternative method, we suggest that States consult with us before employing such a method.

Comment (Subgroup Calculation)

Another commenter recommended allowing public health costs to be calculated for population subgroups, such as children of a specific age group. SLIAG-related costs would be calculated using the population ratio method based on the cost and usage for that age group. For example, costs associated with child immunizations would be apportioned on the basis of the ratio of eligible legalized alien children to all children in a State, county, or city. Other commenters advocated allowing States to use different cost accounting methodologies for different kinds of public health services. For example, actual costs

could be calculated for diagnosis and treatments and a population ratio could be employed for activities more directed to the general public.

Response

We agree and have amended the regulation to include the term "service population." To calculate SLIAG-related costs related to public health, a State may use the ratio of ELAs in a "service population" to the total number of individuals in the service population. The service population will vary according to the area served by a program or activity and the nature of the program or activity. Examples of service populations include the State, a county, the number of school-age children in a county, the number of individuals over the age of 65 in a city, etc.

Comment (Education Costs)

One commenter requested that we define minimum expectations for fiscal control and accounting involving educational services. Another commenter made three suggestions related to a fiscal procedure for educational services. First, States should be required to use fiscal and accounting procedures for elementary and secondary education similar to those required under EIEA. Second, funding from other Federal programs, which is offset against the spending limitations for educational services, should be identified. Third, allowable expenditures for English language and citizenship skills instruction should be determined by calculating actual expenditures or by multiplying the actual number of ELAs receiving such instruction by the average cost for the ELA student population.

Response

We agree and have incorporated these comments in the final rule. Section 402.11(e) specifies the maximum amount of SLIAG funds that may be paid to local educational agencies and to other providers of educational services to adults. Subpart C of the final rule requires States to be able to establish that the amounts of SLIAG funds paid to these organizations did not exceed the amounts specified in § 402.11(e) and were used for purposes allowable under the Act and this Part. Funds used under this Part are subject to 45 CFR Part 74, which is substantially similar to Department of Education grant administration regulations (34 CFR Part 74).

Comment (Offset Disallowance)

One commenter requested that we clearly indicate that a State may offset a

disallowance against allowable, unreimbursed SLIAG-related costs.

Response

As a general rule, this procedure is permissible, provided that it is consistent with 45 CFR Part 74, the Act, this regulation, the terms and conditions of the grant, and the State's accounting practices.

SLIAG and Program Administrative Costs

The sections of the final rule governing SLIAG and program administrative costs are substantially the same as the proposed rule, except for minor wording changes made for clarity.

The regulation provides that States may use SLIAG funds for costs associated with administering SLIAG funds ("SLIAG administrative costs") and for administrative costs in programs of public assistance, public health assistance, and educational services associated with providing those services to eligible legalized aliens, irrespective of the availability of SLIAG funds ("program administrative costs"). SLIAG administrative costs include: Planning (including consulting with local public officials); preparing the application; auditing SLIAG funds; and allocating; tracking, monitoring, and reporting funds among programs and jurisdictions.

We have not specified a methodology for States to determine SLIAG administrative costs. Believing that SLIAG administration is generally a separate activity, we have allowed States to determine such costs using normal cost allocation and accounting procedures, subject to 45 CFR Part 74.

Neither the Act nor this regulation imposes a limit on administrative costs for public assistance or public health assistance. However, by incorporating the definitions and provisions of the EIEA, we believe the Act imposes the EIEA's 1.5 percent limit on administrative costs chargeable to SLIAG by State educational agencies for SLIAG administrative costs. In response to comments asking for guidance on the application of EIEA provisions to SLIAG funds, we have made this limitation explicit in the final rule.

We expect that State and local governments will not need to establish substantial new bureaucratic mechanisms to administer SLIAG funds, which is a temporary funding source. We intend to assess carefully State and local SLIAG administrative costs as part of our program reviews.

In addition to SLIAG administrative costs, State and local governments may

use SLIAG funds for administrative costs associated with those programs and activities which receive SLIAG funds under the State's approved application. In calculating the amount of administrative costs for a particular program or activity, we will accept the use of the percentage of participation by eligible legalized aliens in the program (or the percentage of program costs incurred on behalf of eligible legalized aliens) multiplied by the program's total administrative cost (less any amount related to general SLIAG administrative costs, above). For example, if 10 percent of a program's benefits were associated with eligible legalized aliens, the State may claim 10 percent of the program's administrative costs (less general SLIAG administrative costs) under SLIAG.

Desiring to maximize State flexibility, we have provided that States may use alternative methods of determining program administrative costs chargeable to SLIAG. However, we will carefully assess as part of our program reviews any administrative costs determined by an alternative method.

Comment (Limit on Administrative Costs)

Two commenters advocated limiting administrative costs, one to 10 percent, the other to 20 percent.

Response

The Act clearly intends reimbursement of administrative costs and does not set a limit on such use, except for State educational agencies. We have not imposed by regulation a limit on administrative cost.

Comment (Federal Administrative Cost Carryover)

One commenter asked whether the Federal government would be able to carry over its own administrative costs to future years.

Response

Federal costs for administering SLIAG may not be carried over to future years. However, the Act requires the offset, i.e., Federal program expenses, to be based on an estimate of costs that is included in the President's budget. To the extent the estimate is above or below actual costs, the Act requires that the next year's offset level be adjusted. The offset includes only Federal benefit expenditures for Medicaid, Food Stamps, and programs of financial assistance. It does not include Federal administrative costs for those programs.

Repayment

Section 204(e)(2)(B) of the Act requires that each State repay to the United

States any amounts found not to have been expended in accordance with the provisions of section 204. Expenditures not subject to SLIAG reimbursement include such things as: expenditures on behalf of individuals who do not meet the criteria for an eligible legalized alien or whose status has been terminated by the INS; administrative costs which do not meet the applicable requirements governing the State or local program; and any expenditure which is not in accordance with the provisions of section 204 of the Act, this regulation, or the State's approved application.

The allowability of SLIAG expenditures is subject to the determination of the ultimate allowability of expenditures under the program in question.

Comment (Tolerance for Error)

One commenter advocated establishing an error tolerance level, but did not indicate how or to what figure it would be applied.

A comparison was made with error tolerance rates for "entitlement" programs.

Response

We do not see the need or a legal basis for an error tolerance level. Any funds found to have been expended in a manner contrary to the Act, these and other relevant regulations, a State's approved application, or the terms and conditions of the grant award are subject to repayment to the Federal government.

Comment (Revoked Legal Resident Status)

A number of commenters sought clarification that repayment is not required for services given to an ELA if that status is later revoked.

Response

SLIAG funds may be used for allowable services provided to an ELA so long as that ELA status is in effect, but not longer than five years from the date the ELA initially was granted lawful temporary resident status. If ELA status is revoked, reimbursement is allowed for services provided before revocation, but not for those services provided after the ELA's legal status is terminated or changed to a status outside the statutory definition of "eligible legalized alien."

We recognize the difficulty of tracking ELA status and will work with States to develop satisfactory means for fulfilling this need. We assume that States will be prudent in checking ELA status. For example, if a State is seeking reimbursement on the basis of an alien's

I-688A (Employment Authorization) card, it is prudent to verify that lawful temporary resident status was granted before reimbursement is claimed for services provided beyond the expiration date on the card. (In this instance, if the alien never received legal temporary resident status, no costs associated with providing benefits or services to that alien would be allowable, except for the costs of public health services if the alien had applied under section 245A of the INA.) Likewise, if an ELA is in lawful temporary resident status, a service provider would be prudent to check to see if permanent resident status was granted before seeking reimbursement for services provided after the expiration date on the I-688 (Temporary Resident Card).

Comment (Identifying ELAs)

One commenter expressed concern that providers of services covered by SLIAG must be able to tell who meets the definition of an ELA.

Response

The I-688 Temporary Resident Card identifies an individual as a lawful temporary resident under section 245A or 210 and shows the effective date of the status.

We are working with INS to ensure that the section of the INA under which an alien has adjusted status and the date of adjustment to temporary resident status are shown on the I-551 (Resident Alien Card) provided to the alien when he/she adjusts to permanent resident status.

In addition, States will be able to access INS records through the Systematic Alien Verification for Entitlement (SAVE) program. This program provides for telephonic and other means of accessing certain INS records by authorized users. States interested in using SAVE for this purpose should contact the INS District Director in their areas.

Appeals

All appeals will be handled by the Department's Grant Appeals Board and will be governed by the rules set forth at 45 CFR Part 16. We received no comments on this section.

Time Period for Obligation and Expenditure of Grant Funds

The final regulation provides that funds allotted to a State for a particular fiscal year and remaining unobligated by the State at the close of the fiscal year shall remain available to the State in subsequent years subject to two conditions. First, a State must inform the

Secretary as part of the report required under Subpart F that it is carrying funds forward for obligation in a subsequent fiscal year. Second, the Act provides that SLIAG funds may not be used after September 30, 1994. We interpret this to mean that the State must obligate SLIAG funds by this date.

The regulation provides that States must liquidate obligations within 12 months of the end of the fiscal year in which the obligation is made. This represents a change from the proposed rule, which required *recipients* to liquidate obligations within that time period. However, we recognize that situations may exist where this is not possible (e.g., obligated funds are the subject of litigation and may not be expended). In such a case, the State should notify the Department of the circumstances involved and request that the time period for liquidation be extended.

Comment (12 Month Liquidation Rule)

Several commenters recommended rescinding the requirement that obligations must be liquidated within 12 months of the end of the fiscal year in which the obligation is made. One commenter asked that the time period be extended if the requirement cannot be rescinded altogether. Some commenters suggested that a 12-month liquidation requirement would limit their ability to enter multi-year contracts (presumably for education).

Response

We have not adopted the suggestion to extend the time period to expend funds. We believe that one year after the close of the fiscal year in which the funds are obligated by the State allows sufficient time for the expenditure of funds. For public assistance and public health assistance, SLIAG funds are provided to *reimburse* State and local funds. Thus, we do not believe a 12-month liquidation requirement should pose a problem for these activities. In the event that a State cannot liquidate an obligation within the prescribed time, we have allowed for an extension upon request by the State. The elimination of the requirement, which was contained in the proposed rule, that *recipients* liquidate obligations within 12 months of the fiscal year should serve to alleviate some of the concerns raised by the commenters.

Comment (Rollover)

A number of commenters asked that States be allowed to roll over funds from year to year without reducing the next year's allocation or forfeiting funds to be reallocated to other States. One

commenter asked specifically for a three-year period, at least for the first year's grant, in which to expend funds. Advocating a uniform procedure among States, another commenter suggested that the procedure be a relatively simple part of the application.

Response

As noted above, the regulation allows States to carry unobligated funds forward to subsequent fiscal years. There is no "procedure" involved in carrying funds forward for obligation in subsequent fiscal years, except for the report required by § 402.51.

The amount of SLIAG funds actually expended in a given fiscal year does not affect future years' allocations. Only a State's SLIAG-related costs, not its expenditure of SLIAG funds, are a factor in determining a State's allocation. (See Subpart D, State Allocations, and the preamble to that Subpart.)

Comment (Retroactive Reimbursement)

One commenter suggested that States be allowed to use funds allocated in one fiscal year to reimburse expenses incurred in a prior fiscal year.

Response

Section 204(a) of the Act appropriates SLIAG funds "for FY 1988 and each of the three succeeding fiscal years" (emphasis added). Section 204(b)(4) provides that "any amount paid to a State for any of the following fiscal years and remaining unobligated at the end of such years shall remain available to such State for the purposes for which it was made in subsequent fiscal years . . ." (emphasis added).

Relying on the fact that SLIAG funds are appropriated for a fiscal year, the regulation provides that SLIAG funds shall be used by States for costs incurred in that fiscal year, except as provided in § 402.12 of the regulation. Consequently, States may use SLIAG funds for SLIAG-related costs incurred during and subsequent to the fiscal year in which funds were made available, but not to reimburse costs incurred in a prior fiscal year. (The Act explicitly allows States to carry SLIAG funds over for use in succeeding fiscal years, through September 30, 1994.)

Subpart D—State Allocations

In response to the comments received on the proposed rule, we have made a number of changes to the method by which we will allocate funds. We have also made changes elsewhere in the regulation to allow us to implement the changes to the allocation method. We did not change the formula weights. In summary, we have:

(1) Adopted the alternative allocation methodology described in the preamble to the proposed rule with several modifications in response to comments received. We will allocate funds twice in FY 1988, as described in the proposed rule, once in each of FYs 1989 and 1990 and twice in FY 1991. Each time we allocate funds, we will allocate on the basis of the total amount of funds that have been made available for grants to States to date, the best data available on the number of ELAs in each State, and cumulative SLIAG-related costs based on the most recent actual and projected cost data; and

(2) Modified the application requirements to include updated cost estimates for the current fiscal year, as well as projected costs for the year for which application is being made.

(Following are descriptions of how we have addressed the specific comments received regarding the allocation and allotment of SLIAG funds.)

Basis of Awards

The regulation provides that grants will be made based on the apportionment of funds from the Office of Management and Budget and that the grant award made by us is the State's authority to draw and expend SLIAG funds.

Comment (Annual Awards)

Two commenters advocated annual, rather than quarterly, grant awards, asserting that quarterly awards create unnecessary complications in planning and contracting for services. One asked that States be given annual award estimates, if annual awards are not possible.

Response

Annual determination of allocations with quarterly award of funds is the general approach taken by the Department for its formula and block grants. With the exception of FY 1988, States will be notified of the total amount of their allocations at the beginning of the fiscal year. For FY 1988, initial allocations will be made at the beginning of the year based on one-half of the funds available for grants to States. Appendix A shows the amount of SLIAG funds which States with approved applications will receive for this initial FY 1988 allocation. Final FY 1988 allocations will be determined in the fourth quarter of FY 1988 using updated counts of eligible legalized aliens and information provided by States on SLIAG-related costs. We will notify States as soon as possible of their full-year FY 1988 allocations.

Allocation Formula

We received many comments regarding the allocation formula recommending disparate changes in the weight given to the various factors and suggesting other ways to measure cost. Most of the suggested approaches involved changing the relative weights given in the formula to ELA population and SLIAG-related costs. This is not surprising, since persuasive arguments can be made for using either ELA population or SLIAG-related costs as the primary determinant in the allocation formula. Realizing the advantages and the disadvantages of relying on either measure, we proposed a formula that gave equal weight to both. After carefully considering all the public comments on the NPRM, we continue to believe that this balance provides the most equitable approach to allocating SLIAG funds among States.

We share the concerns expressed by a number of commenters regarding the difficulty of obtaining accurate estimates of SLIAG-related costs that are comparable across States. However, we believe that changes in the application and reporting requirements, discussed elsewhere in this preamble, will improve the accuracy and comparability of SLIAG-related cost data. Also, the alternative allocation methodology we have adopted in the final rule will correct for any discrepancies between projected and actual SLIAG-related costs. A discussion of specific comments received regarding the allocation formula follows.

Comment (Factors/Weights)

We received numerous comments which addressed the factors and weights used in the formula for determining State allocations. A number of commenters expressed concern that the weight given to SLIAG-related costs in the proposed formula would result in States "being drawn into a spending competition" and would disproportionately alter the distribution of funds in favor of states with high-cost discretionary service programs.

A number of commenters suggested that the weight given to SLIAG-related costs be reduced and that the weight given to States' shares of the ELA population be correspondingly increased.

Several commenters asserted that States with decentralized delivery systems would be disadvantaged in developing accurate cost estimates relative to States that operated service programs at the State level.

One commenter argued that service costs to undocumented aliens cannot be documented and therefore should not be used as a factor in distributing funds.

One commenter supported the weighting of the ELA and SLIAG-related cost factors as proposed.

Response

We share commenters' concerns about the difficulty States will have in developing accurate and comparable measures of SLIAG-related costs. We also agree that the discretionary nature of some cost components might result in some States being unfairly disadvantaged by a formula that gives excessive weight to costs that are subject to State action. That is why we have retained ELA population as a major factor in the formula. However, we continue to believe that the primary purpose of SLIAG is to offset part of State and local government costs resulting from the Act. Congress could have based the allocation of SLIAG funds exclusively on either costs or States' ELA populations. Instead, Congress specified that both factors be considered, clearly indicating that it sought a balance. We therefore have retained the allocation formula contained in the proposed rule, giving equal weight to the numbers of ELAs and to SLIAG-related costs. (See the response to other comments for additional discussion of our reasoning in retaining the proposed allocation formula.)

We have made changes elsewhere in the regulation to help us better ensure the validity and comparability of States' cost estimates. For example, we have clarified the definition of SLIAG-related costs and have clarified the allowability of various benefits and services so as to provide a more specific basis for States' development of cost estimates. We have also required that the cost estimates provided in States' applications and the actual cost data supplied in the report required by Subpart F be accompanied by information sufficient to enable us to evaluate whether the costs are allowable and determined using reasonable methodologies.

Comment (Cost-Based Formula)

One commenter suggested an alternative method for making adjustments that would provide funding to each State based on the same relative share of costs. This formula would use only the cost factor to allocate funds. Total actual expenditures would be compared to previous allotments, and adjustments would then be made to provide a proportionate share of the difference between prior actual costs

and prior allotments in the allocation. The commenter noted that the alternative methodology discussed in the proposal "appears to accomplish a similar objective" and "closely approximates the results that would be obtained using our suggested approach."

Response

We agree that ongoing adjustment of a State's allocation based on updated estimates of its SLIAG-related costs and its actual SLIAG-related costs is preferable to the adjustment method in the proposed rule and have adopted a modified version of the alternative methodology which accomplishes this objective. We have not revised the factor weights to eliminate all factors except cost, as the commenter suggests, because, had Congress desired a strict proportionate allocation based on cost, it would have prescribed that rather than providing a range of factors that must be taken into account by the Secretary. (See our response to other comments in this Subpart.)

Comment (Education Costs)

A number of commenters supported the weights proposed in the NPRM but suggested that we not include education costs as part of States' SLIAG-related costs.

Several commenters suggested that we reduce the weight given to SLIAG-related costs and increase the weight given to States' share of the ELA population to recognize education costs.

Citing the legislative history of the Act, one commenter noted that the allocation formula in SLIAG derived from the Senate version of the immigration reform legislation, which did not include education costs. (Education costs were added by the House.)

Doubting that an accurate measure of education costs can be developed, one commenter expressed concern that States would increase discretionary education spending in order to receive higher SLIAG allocations.

One commenter suggested not including education costs in calculating State allocations after FY 1988.

Response

We see no basis in the Act to exclude allowable SLIAG-related education costs from the allocation formula. However, in response to the numerous comments concerning education, we have made several changes to the section of the regulation relating to educational services. These changes better define those costs that are

allowable under SLIAG and that may be counted as SLIAG-related costs.

Comment (Inclusion of General Assistance Costs)

One commenter objected to the inclusion of general assistance costs in the allocation formula. The commenter asserted that the Act prohibits aliens who receive cash payments under general assistance from obtaining citizenship. Consequently, assistance which is "denied in the general provisions of the new Immigration (sic) law should not be awarded indirectly through other promulgated regulations."

Response

We see no basis in the Act for excluding the costs of general assistance to ELAs, provided such assistance meets the requirements of the Act and these regulations. Although States may elect to exclude ELAs from assistance programs, including general assistance, if States do provide such assistance, such expenditures would normally be allowable SLIAG-related costs. Aliens are not barred by IRCA or the INA from receiving general assistance.

Comment (Weight Given to ELA/State Population Ratio)

Several commenters recommended increasing the weight given to the ratio of ELAs to States' population. (The proposed formula gives this factor a weight of 1 percent.) Several commenters recommended increasing the weight given to this factor to 10 percent. One commenter cited studies which link the concentration of undocumented aliens with costs. Two commenters recommended reconsidering the weight given to this factor after reviewing the costs data submitted pursuant to section 402.52 of the proposed rule.

Response

We agree that costs incurred by a State will increase as the number of ELAs increases. This is reflected in the allocation formula by including each State's share of the total number of eligible legalized aliens in the U.S. as well as the SLIAG-related costs.

We also acknowledge the possibility that per capita costs may be higher in States where ELAs make up a higher percentage of the State's population than in other States, although none of the studies cited by the commenters supports this conclusion. But even if this were to be the case, the allocation formula accounts for this directly by including SLIAG-related costs. If a State has higher costs per ELA (due to a high concentration of ELAs in the State or because it has higher costs generally),

that State will get a higher allocation per ELA.

We see no evidence in the Act or its legislative history indicating an intent to offset a significantly higher percentage of a States' SLIAG-related costs simply because ELAs represent a higher percentage of that State's population than in other States.

Comment (ELA Data)

We received a number of comments regarding data on the number of ELAs which we will use in the allocation formula. A number of commenters objected to the use of Census-based estimates. Several commenters recommended that we use actual counts of aliens who have applied for legalization under sections 245A and 210 of the INA. Some commenters suggested using projections of applicants to account for the longer application period available to special agricultural workers.

Response

As we indicated in the preamble to the proposed rule, our intent was, and is, to use actual data from the INS legalization program in determining State allocations. The initial FY 1988 State allocations shown in Appendix A of this rule reflect aliens who have applied for legalization through January 8, 1988. We will update this information each time we calculate State allocations.

We have decided not to allocate funds based on projections of the number of aliens that will receive assistance. We prefer instead to allocate based on actual data current as of the time we make allocations. The alternative allocation methodology we have adopted will correct for any discrepancies between the data we use for allocation at any given time and the number of eligible legalized aliens that ultimately gain legal status.

Comment (Secondary Migration)

One commenter recommended that, for fiscal years 1990 and 1991, the Department adjust INS data to account for secondary migration.

Response

We agree in principle. We will explore ways in which to account for secondary migration. We note that aliens who legalize under section 245A of the INA will have to apply to INS for lawful permanent resident status. We will explore with INS whether the data from that application process, which would reflect secondary migration, will be available for use in allocating SLIAG funds.

Comment (Federal Estimates of SLIAG-Related Costs)

We received several comments on the Federal estimates of SLIAG-related costs which we proposed to use in calculating FY 1988 allocations. One commenter agreed with the use of Federal estimates and our rationale for doing so. Another commenter requested that we include more description of how the Federal estimates of SLIAG-related costs are derived. Several commenters recommended using more recent data, in some cases citing increased costs since the 1984-85 Census of Governments data were collected. None of these commenters provided suggestions as to what other data sources we should use. Several commenters objected to the use of the Census data because it includes extraneous costs unrelated to the costs of service and varies widely by State and because the Census data misses some SLIAG-related costs.

Response

The rule provides for the use of Federal estimates of relative SLIAG-related costs in computing initial FY 1988 SLIAG allocations. The following is an explanation of how these estimates are computed:

The basic data source is the 1984-85 Census of Governments ("Government Finances in 1984-85," U.S. Department of Commerce, Bureau of the Census, Publication Number GF85 No. 5, Table 22, "Expenditure of State and Local Governments by Function and States: 1984-85"). The basic methodology involves adjusting the State-level expenditure data from this source for certain expenditures that would not be relevant to or reimbursable under SLIAG and then computing per capita expenditures. These per capita expenditures are then multiplied by the number of eligible legalized aliens in the State.

For public health, we used the column titled "Health" on page 28. The major categories included in this measure—public health administration, categorical health programs, and treatment and immunization clinics—are likely to be claimed as SLIAG-related costs by States.

For public assistance, we took the "Total" column for public welfare expenditures on page 27 and made several adjustments. First, we subtracted the column entitled "Categorical Assistance Programs," which is primarily AFDC. Because virtually all eligible legalized aliens are barred from AFDC, this cost is not relevant to SLIAG. We also subtracted

the Federal share of Medicaid program and administrative expenditures, using data from the HHS Health Care Financing Administration for FY 1985.

Population data for States (used for computing per capita expenditures) were taken from the *State and Metropolitan Area Data Book* for 1986. (U.S. Department of Commerce, Bureau of the Census, *State and Metropolitan Area Data Book—1986*, Table C, Column 5, page 504.) Data for the territories were taken from Census Current Population Reports. (U.S. Department of Commerce, Bureau of the Census, *Current Population Reports*, "Population Estimates and Projections," Series P-25, No. 997, November, 1986, Table 2.)

The Census of Governments did not include information on Puerto Rico and the territories. We used a variety of sources for this information, including unpublished Census data and data from national organizations.

Uncertainty regarding the level of SLIAG-related costs at this point in time prompted us to propose using Federal estimates for initial FY 1988 allocations. However, the allocation process that we have developed provides for States' submitting information in July, 1988, when much of this uncertainty will have been resolved. We will use that information for the final allocation of FY 1988 funds. In addition, the allocation methodology adopted in the final rule involves a continuous adjustment of State allocations based on more recent data (i.e., updated estimates and actual cost reports) throughout SLIAG's four-year life. This methodology will adjust for any initial over- or under-allocation of funds resulting from use of the Federal estimates of relative SLIAG-related costs.

Comment (Adjustment)

One commenter objected to the way in which we proposed to account for the difference between actual SLIAG-related costs and previous years' State allotments. The commenter believed that our proposed method was inconsistent with Congressional intent because it failed to adjust for cases where allotments in previous years exceeded costs and failed to adjust for differences between actual costs and allotments in all fiscal years.

Response

We agree that the proposed method did not adjust for differences between allotments for FY 1990 and FY 1991 and SLIAG-related costs in those years. In response to this and other comments, we have made several changes in the allocation methodology.

First, the alternative allocation methodology, which we have adopted for the final rule, makes a direct correction for any over- or under-allocation of funds by computing allocations based on cumulative funding and cumulative SLIAG-related costs.

Second, we are requiring updated cost estimates for the current fiscal year to be submitted at the time of application. While these estimates may not be "actual" cost data (States may base these estimates on partial-year actual costs), we expect that they will be more accurate than cost estimates submitted with States, applications prior to the beginning of the fiscal year. As actual costs, as reported pursuant to section 402.51, become available, they will be factored into the allocation formula.

Finally, we have provided for a reserve of 25 percent of FY 1991 funds to be allocated in the second half of that fiscal year. The purpose of this reserve is to make final adjustments to State allocations based on the actual cost data for FY 1990 provided by States pursuant to Subpart F of this regulation.

Comment (Base Level Allocation)

One commenter recommended that the initial allocation of funds provide for a minimum allocation (0.25 percent of the funds available) for each State to recognize that States will incur a fixed level of administrative and start-up costs regardless of their ELA populations. The funding for this minimum allocation would come out of the 50 percent of the funds we had proposed be allocated on the basis of each State's share of SLIAG-related costs. After the initial FY 1988 allocation, allocations would be based on the formula, with no minimum grant amount.

Response

We have not adopted the recommendation. The amount suggested equals more than \$1 million, which far exceeds that estimated annual allocation for a number of States. In addition, implementing this recommendation would encourage the development of elaborate administrative structures, which we seek to avoid.

Determination of Allocations

Comment (Alternative Allocation, Additional Report, 2 Awards)

Three commenters preferred the alternative allocation methodology to the one proposed, believing the alternative method would result in more accurate allocation. One commenter expressed concern about the additional reporting burden involved with the

alternative allocation methodology and suggested that we study ways to get the necessary information without additional burden. Another commenter noted that allocating funds more than once a year would be problematic for State planning.

Response

In response to these comments, we have adopted a variation of the alternative allocation methodology discussed in the preamble to the proposed rule. We agree that this approach will result in a more accurate allocation of funds.

We will allocate funds only once a year in fiscal years 1989 and 1990. (We have concluded that allocating funds twice in FY 1988, as we proposed, is warranted by the uncertainty surrounding both the distribution of ELAs by State and the SLIAG-related costs States will incur. We believe that holding back 25 percent of FY 1991 funding for allocation after we receive States' actual cost reports for FY 1990—due December 31, 1990—will ensure a more equitable allocation of SLIAG funds.) By reducing the number of times we allocate funds from what was described for the alternative allocation methodology in the preamble to the proposed rule, we will mitigate the problems associated with allocating more than once in a fiscal year.

While we have not been able to eliminate additional reporting burden, the methodology we have adopted should minimize that additional burden. The allocation methodology we have adopted will not require the submission of additional reports. (The proposed rule provided for the submission of additional reports on a voluntary basis.) Although we are requiring the submission of additional information as part of States' applications, we expect that States will have developed the necessary updated cost data on the current fiscal year in order to prepare cost estimates for the year for which they are making application.

Providing that information to us as part of their applications should impose little additional burden on States, but should significantly improve the accuracy and equity of SLIAG allocations. For final allocations in FY 1991 (using the reserved 25 percent), we will rely on final FY 1990 cost reports.

In the preamble to the proposed rule, we also noted that the version of the alternative allocation methodology described therein would require more Federal administrative effort and oversight than was warranted. Many of the comments to the proposed rule

reflected concern that the allocation of funds be fair and based upon reasonable and comparable data on SLIAG-related costs. We have concluded that the additional expenditure of Federal effort to provide for evaluation of more detailed reporting of SLIAG-related costs (see Subpart E) is necessary to achieve an equitable allocation of funds and is therefore warranted.

Comment (Obligation vs Expenditure)

One commenter requested clarification regarding how obligated funds will be treated for purposes of making the adjustment for the difference between actual costs and allotments.

Response

Although we have adopted the alternative allocation methodology, which obviates the need for a separate adjustment for the difference between actual costs and allotments, this question is still relevant. We have clarified the definition of SLIAG-related costs in § 402.2 of the final rule. SLIAG-related costs are incurred when funds—SLIAG or State/local—are expended.

Determination of State Allotments

A State's allotment generally is the difference between the amount determined by the allocation formula in § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State. For example, if the amount of a State's allocation determined by the formula is \$700,000 and the cumulative amount previously allotted to the State is \$500,000, then the amount of the State's allotment for the current period is the difference, \$200,000.

In the event that a State's allocation determined under the cited paragraphs is less than the amount previously allotted to the State, (e.g., the allocation is \$700,000 and the cumulative amount previously allotted is \$800,000), that State's allotment for the current period will be zero. (In this case, the State would have received more funds than indicated by the allocation formula. It would receive no additional funds until its allocation in a later fiscal year exceeded the amount previously allotted to the State.) In such an event, the total amount of the remaining States' allotments, calculated according to the previous paragraph, would exceed the funds available for grants to States. Consequently, the allotments of the remaining States would be calculated by multiplying the amount the State otherwise would have received (the difference between the amount determined by the allocation formula in § 402.31(b) (2) through (6) of this

regulation and the cumulative amount previously allotted to the State) by the ratio of the funds available for grants to States to the sum of the differences between the amounts determined under paragraphs 402.31(b) (2) through (6) and the amounts previously awarded to those States.

Comment (FY 1988)

One commenter expressed confusion regarding the explanation of how final FY 1988 allotments would be computed.

Response

We have rewritten the section of the regulation that describes how allotments will be determined. We believe the revised language is clear.

Allotment of Excess Funds

The regulation provides for the allotment of excess funds. Excess funds would be available if a State failed to qualify for an allotment in a fiscal year or indicated in its application that it did not intend to use its allotment in the year for which application was made or in the succeeding fiscal year.

Comment (Reallotment)

One commenter requested clarification that the allotment of excess funds applies only to those amounts explicitly identified in the State's application as funds which the State does not intend to use in the current or subsequent fiscal year.

One commenter suggested that excess funds should be applied to cover costs from prior fiscal years which were not reimbursed.

One commenter requested clarification on the process for allotting excess funds. Specific questions included: How would States know of excess funds; how would a State apply for excess funds; what information should be included in the State's application; and, how would receipt of funds affect the State's allocation request in the subsequent fiscal year?

Response

We would make funds available for reallotment under § 402.33 only if a State's application explicitly indicated that it did not intend to use its allotment in the year for which application was being made or the succeeding fiscal year, or if a State failed to qualify for an allotment. The allocation of excess funds is essentially automatic and would occur at the beginning of a fiscal year. No additional application is necessary in order for a State to receive funds made available under this section. Receipt of funds made available under § 402.33 will not affect a State's

subsequent year's allocation. The amount of SLIAG funds which a State receives, obligates, or expends in a fiscal year, including funds received by operation of § 402.33, does not affect its allocation for subsequent fiscal years. The allocation of funds is based solely on the number of ELAs and SLIAG-related costs.

Subpart E—State Applications

General

The Act requires that a State submit an annual application, which must be approved by the Secretary, in order for the State to be allotted SLIAG funds. A State's application consists of the information required by the Act and this regulation.

If a State fails to qualify for an allotment in a fiscal year, no SLIAG-related costs for that fiscal year will be counted in determining its allocation in subsequent fiscal years for which it makes application.

Application Content

The final rule provides that State applications must contain the following information:

Statement of Assurances

Section 204(d) of the Act requires that States submit, as part of their applications for SLIAG funds, a certification to three assurances. A State must certify that: (1) Funds allotted to the State under SLIAG will only be used to carry out the purposes described in section 204(c)(1) of the Act; (2) the State will provide a fair method (as determined by the State) for the allocation of funds among State and local agencies taking into account the number of eligible legalized aliens and the costs which the State and each locality (which we interpret to mean local government) are likely to incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens; and (3) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements of subsections (e) and (f) of section 204 of the Act, relating to reports and audits, and to limitations on payments, respectively.

In addition to the three statutory assurances, we proposed to add an additional assurance, namely, that the State will comply with the anti-discrimination provisions set forth in section 204(h) of the Act. We received no comments on this proposal and have incorporated this requirement into the final rule.

Certification by the Chief Executive Officer

Because the assurances required by the Act will normally involve a number of State agencies and jurisdictions, we require that the certification required by the Act must be made by a State's chief executive officer or an individual authorized to do so by the chief executive officer. Such authorization must specifically include power to make all the required assurances; a delegation of authority simply to administer the program is not sufficient to enable the designee to certify to the assurances. In this regard, we have followed the procedures adopted for the HHS-administered block grant programs.

Estimated Number of Eligible Legalized Aliens

As required by section 204(d)(2)(A) of the Act, States must submit, as part of their annual applications for SLIAG funds, "the number of eligible legalized aliens residing in the State." Recognizing that such data is not readily available to States, we have provided in § 402.41(b) that States may adopt the estimate provided by the Department of the number of eligible legalized aliens in the State. The Department will make such estimates available to States periodically. They will be based on data from the Immigration and Naturalization Service.

While we have left open the option for a State to develop and submit its own estimates of the number of eligible legalized aliens, along with supporting documentation, we expect that most States will elect to use the estimates we provide. We suggest that any questions concerning the data developed by the INS be directed to them and that States work with us and the INS to correct any problems States may see with these estimates.

SLIAG-Related Costs

Closely tracking section 204(d)(2)(B) of the Act, § 402.41(c) requires that States' applications contain detailed information on the SLIAG-related costs which State and local governments are likely to incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens and in administering SLIAG in the fiscal year for which application is being made. These estimates may include only costs that meet the definition of SLIAG-related costs contained in § 402.2 of this regulation.

Section 402.41(c) now also requires States to include in their applications updated estimates of SLIAG-related costs for the fiscal year in which the

application is submitted, as well as estimates of the SLIAG-related costs the State is likely to incur in the fiscal year for which application is being made. For example, States' applications for FY 1990 (due by July 15, 1989) would include estimates of both FY 1990 SLIAG-related costs and updated estimates of FY 1989 SLIAG-related costs. We have adopted this change in order to implement the alternative allocation methodology discussed under Subpart D, with a minimum of additional reporting burden on States. Based on consultations with State and local government officials, we understand that most States will be collecting this type of information for their own use in preparing their applications. Reporting such information to us should involve minimal burden and will significantly enhance our ability to fairly and accurately allocate funds.

Applications must contain estimates of SLIAG-related costs for each program or activity in which such costs have been or will be incurred. These costs must be identified as public assistance, public health assistance, educational services, or SLIAG administrative costs. (Program-specific administrative costs should be included under the appropriate program or activity.) We are not requiring any specific breakdown by agency or local government. States' estimates of SLIAG-related costs for FY 1988 should include SLIAG-related costs incurred in FY 1987 pursuant to § 402.12 of this regulation.

The regulation specifies that the estimates must be supported by descriptions of the programs and activities for which costs have been or will be incurred in sufficient level of detail to permit us to evaluate whether the costs are consistent with statutory and regulatory provisions. The estimates of SLIAG-related costs for each program or activity must also be supported by descriptions of the methodologies and assumptions employed to derive the cost estimates, e.g., number of eligible legalized aliens, participation rates, and unit costs or other measure of costs (along with a description of the method used to derive cost factors).

We encourage the State's chief executive officer or other appropriate State officials to consult with appropriate local public officials or their representatives concerning the data which the Act requires the State to submit as part of its application, namely the estimated number of eligible legalized aliens and estimated SLIAG-related costs incurred by State and local governments. The Act provides that the method of allocating funds among State and local agencies must be "fair" in

accordance with these data and other factors. Although we are not requiring such consultation as a condition of our approval of a State's application, we believe local government input into the development of these data is essential.

Criteria for and Administrative Methods of Disbursing Funds

Section 204 of the Act requires that applications for SLIAG funds contain criteria for and administrative methods of disbursing funds.

Single Point of Contact

For administrative efficiency, we have required that a State designate a single point of contact (SPOC) between the State and Federal government. This SPOC may, but need not be, the administering agency. The SPOC is responsible for securing and submitting information required by the Act (e.g., the application including any necessary amendments, and the State's annual report).

The proposed regulation also provided that the State include in its application information on the SPOC and grantee agency, if different from the SPOC. We have noted in the final rule that this information need be included only if the information had not previously been given to the Department or if the information has changed.

We received several comments which addressed the proposed application content. We have described below the various comments and our responses to them.

Comment (Amend Number of ELAs)

One commenter recommended that we allow States to amend their applications to change the number of eligible legalized aliens, if warranted.

Response

The issue concerns whether a State may revise its estimate of eligible legalized aliens population after the application process has been completed. Nothing in the regulation precludes States from amending their SLIAG applications, including revising the estimated number of eligible legalized aliens in the State. However, for the purposes of the allocation formula, described in Subpart D, the Secretary will use INS data on the number of eligible legalized aliens in each State and will not update this information during a fiscal year (except for FY 1988 and FY 1991, as provided for in Subpart D).

We note that a State's estimate of eligible legalized aliens made at the beginning of a fiscal year does not

establish a ceiling on the number of individuals that may receive assistance in a fiscal year.

Comment (Other Grantees)

One commenter suggested that, in the event a State does not apply or fails to qualify for funding, individual associations and nonprofit organizations be given the opportunity to apply.

Response

The Act is explicit. States are the recipients of State Legalization Impact Assistance Grants. Unlike some other HHS program statutes, the Act makes no provision for a "bypass" to other potential grantees in the event that a State fails to qualify for an allotment.

Comment (Required Consultation)

Several commenters suggested that the Department, by regulation, require States to consult with or give defined roles to various entities, including units of local government, the State legislature, and appropriate non-profit service providers, in the development of the State application for funding.

Response

Section 204(d) of the Act sets forth the State's obligations in applying for SLIAG funds. We believe that State consultation with local government officials in the development of data for the State application is essential. However, we believe that the extent of such consultation should be left to the discretion of the State and is not a matter appropriate to Federal regulation.

The Act, unlike some other HHS program statutes, does not explicitly define a role for the State legislature or other entities in the development of State applications. We decline to regulate normal governmental processes within the State.

Comment (SAW Data)

One commenter suggested that we require States to provide data in their applications and reports which break down the number of SAWs, and the types and cost of services provided to SAWs.

Response

The Act requires only that States submit information on eligible legalized aliens in their applications. Imposition of such a requirement would require State and local governments to track separately the various categories of eligible legalized aliens, adding to administrative burden and expense. Therefore, we have not imposed any additional Federal reporting requirements on States with respect to

SAWs. We also note that the Act requires that, in order to be reimbursable under SLIAG, programs of public assistance and public health assistance be generally available to the citizens of a State. Thus, these services would have to be available to SAWs as well as to aliens who adjust under section 245A.

Comment (Local Costs)

Several commenters noted that, in response to section 204(d)(2)(b), applications should include information on costs each locality is likely to incur.

Response

We do not believe that the Act clearly requires that States show separately the costs each unit of government is likely to incur; nor is this information necessary for Federal administration of SLIAG. Therefore, we have declined to adopt this comment. However, the fact that we are not requiring cost data to be broken down by units of local government does not preclude a State from including such information in its application.

Comment (Certifying Agent)

One commenter recommended that we allow each State to determine its own certifying agent and process, as long as the State meets the requirements of the Act.

Response

While the Act does not specify who the certifying agency should be, it does require certification to assurances by the States in order to receive SLIAG funds. For the reasons noted in the introduction to this section, we believe it is appropriate to require that a State's chief executive officer or his/her designee certify to the assurances.

Comment (Local Right of Appeal)

One commenter suggested that we give municipalities the right to appeal the State's funding, if they can demonstrate that the allocation process within the State is unfair.

Response

There is nothing in the Act or regulations which prohibits a city or any unit of local government from addressing the allocation process within a State. Any such process would be an internal State administrative or judicial matter. Therefore, we have declined to regulate in this area.

Comment (Administrative Costs)

One commenter suggested that we specify whether program-specific administrative costs should be

disaggregated from other administrative costs in the application.

Response

We have revised the final rule by requiring States to provide estimates of SLIAG administrative costs in their applications. Program-specific administrative costs should be included under the relevant category, i.e., public assistance, public health assistance, or educational services.

Application Format

Desiring to provide States with flexibility, the Secretary is not prescribing any particular format for the application. Each State should insure that its submission satisfies the requirements of the Act and this regulation.

Comment (Model Application)

Two commenters recommended that we send States a "model" application.

Response

Desiring to provide States with flexibility, we have not prescribed the format for SLIAG applications. However, we will work with interested States to develop a model State application. Use of this model application would be voluntary.

Application Deadline

Section 204(d) of the Act requires the Secretary to allot SLIAG funds to States with approved applications. A State's allotment is affected by the number of States with approved applications and by SLIAG-related costs. Consequently, prior to determining allocations, we need to know (1) the number of States with approved applications and (2) the SLIAG-related costs associated with those States applying for funds.

In response to public comments, we have changed the due date for FY 1988 applications from December 31, 1987, as originally proposed, to May 16, 1988. This change is appropriate because this regulation was not available to States prior to the beginning of FY 1988. In addition, as noted by several commenters, the Department does not need to know the actual number of States applying for assistance and their SLIAG-related costs until late in FY 1988. We have adjusted the due date accordingly to allow States additional time to prepare and submit applications.

Additionally, we have revised the application deadlines for FY 1989 through FY 1991. We believe that these deadlines allow States a reasonable amount of time to develop applications for funds and provide a reasonable

amount of time for the Secretary to review applications and allocate funds at the beginning of the fiscal year to those States with approved applications. (This change was prompted in large part by comments concerning the time allowed a State to revise its application after HHS's disapproval, as discussed below.)

The final rule provides the following application deadlines.

Fiscal year	Deadline
FY 1988.....	May 16, 1988.
FY 1989.....	July 15, 1988.
FY 1990.....	July 15, 1989.
FY 1991.....	July 15, 1990.

If a State fails to submit an application by the application deadlines established in this regulation, it will not receive an allotment for that fiscal year.

It is the State's responsibility to ensure that its application is approvable by July 1, 1988 (for FY 1988) in order for the Department to issue final FY 1988 grant awards and by October 1 for subsequent fiscal years in order for the department to issue fiscal year grant awards. A State which submits its application on July 15 should assume it will have no more than 30 to 45 days to revise a deficient application. If a State anticipates that it would need more time, it should submit its application earlier.

Public comments received concerning the application deadline are discussed below.

Comment (Time Frame for Approval)

Several commenters expressed concern about the time frames and process involving approval and disapproval of applications. One commenter suggested that the Department send notices to States regarding approaching deadlines for State applications.

Response

Most of the concern revolves around the short time between the publication of the final regulations for SLIAG and the proposed application deadline for FY 1988 of December 31, 1987. In response to this concern, we have revised the final rule providing an application deadline of May 16, 1988 for FY 1988 SLIAG applications.

We have also revised the application deadlines for FY 1989 through FY 1991 as indicated above to allow States a reasonable amount of time to develop applications, to provide an opportunity for the Department to review them prior to the beginning of the fiscal year, and to provide significant time subsequent to

Federal review for States to submit any information necessary in order to have their applications approved.

We do not think it is necessary to send State agencies notice of approaching deadlines, as suggested by one commenter.

Generally, States should allow 30 days for the Department's review of their application, depending on the complexity of the State's activities and the amount of information provided within the application.

Basis for Approval

The Department will review each State's application to ensure that it contains all of the required assurances and information and is consistent with the Act and this Part. We will evaluate the programs and activities included in the State's application to determine if costs associated with them would be allowable under the Act and this Part. We will also assess the reasonableness of the cost estimates provided in the State's application according to the criteria enumerated in this Part. The Department's approval of State applications will be predicated on that review.

Our evaluation of the reasonableness of States' SLIAG-related cost estimates will be based on the following criteria:

- Are the activities for which estimates are included in the application allowable under the Act and this Part?
- Are the rates of participation by eligible legalized aliens in the activities for which estimates of SLIAG-related costs are included in the application and other assumptions underlying the cost estimates based on reliable empirical data?
- To what extent are the estimates based on actual costs incurred? Are actual costs based on methodologies described in this Part or other methodologies likely to result in valid measures of SLIAG-related costs?
- Do current estimates appear to be consistent with past estimates, known actual costs pursuant to paragraph 402.41(c)(2), and current INS eligible legalized alien population data?
- Are revised estimates a result (all or in part) of changes in program activities?

We will work with States to correct any deficiencies or problems that we find with the programs or activities for which they claim SLIAG-related costs or with the methodology or assumptions used to provide data on SLIAG-related costs. If we are unable to resolve our concerns and conclude that the magnitude of the problem is sufficient that, if uncorrected, we would be unable

to provide for an equitable allocation of funds based on the information provided in the State's application, we will deny that State's application.

Subsequent to its review, the Department will notify the State that the State's application is either approved or disapproved, together with the reasons for disapproval.

Approval of a State's FY 1988 application prior to the State's obligation of its own funds for allowable costs, to be subsequently reimbursed or paid for under SLIAG, is not mandated. A State may use SLIAG funds to reimburse itself for expenditures made in FY 1988 prior to approval of its application as long as such obligations are consistent with the State's subsequently approved application, the Act, this regulation, and the terms and conditions of the grant. (Applications for FY 1989 through FY 1991 must be approved prior to the beginning of the fiscal year. Therefore, the issue of reimbursement for costs incurred prior to our approval of a State's application is not relevant for those years.)

Public Availability

The Act contains no public participation or public hearing requirement related to public availability of a State's application or the manner in which it intends to expend SLIAG funds. We have not included such a requirement by regulation. However, believing public disclosure is appropriate, we encourage States to make their applications for SLIAG funds available for public inspection.

Comment (Public Participation)

One commenter suggested that public participation in the formulation of State plans should be mandatory.

Response

Since the Act does not specifically require public participation in the formulating of State plans, we have declined to make such a requirement by regulation. As noted, however, we do consider the availability of public inspection and comment on State applications to be both appropriate and important.

Amendments to Applications

As a result of other changes made in the application content and allocation procedures, we have added a paragraph (402.45) providing for amendments to applications. A State must amend its application when the State adds an activity or programs for which it intends

to make payment or claim reimbursement in that fiscal year.

Subpart F—Recordkeeping and Reporting

Recordkeeping

The regulation provides that States must maintain records that are necessary to demonstrate that their expenditures of SLIAG funds meet the requirements of the Act and applicable Departmental regulations, to permit the State to prepare the annual report on its activities required by the Act and this Part, and to permit the State to comply with fund accounting requirements by tracking funds to allowable expenditures.

Comment

Comments received on recordkeeping focused on identifying eligible legalized aliens for purposes of documenting the allowability of expenditures. One commenter noted that if States were required to identify and track eligible legalized aliens who use the public health system, it would be a deterrent and might be discriminatory.

Response

States are responsible for ensuring that SLIAG funds are expended only for allowable purposes. Subpart C of the regulation establishes procedures to ensure that SLIAG funds are expended consistent with the requirements of the Act and this regulation.

In addition, each recipient must establish the allowability of costs. This will most likely require some accounting of eligible legalized aliens receiving benefits or services. Because SLIAG funds are appropriated for a specific purpose, we believe a connection between eligible legalized aliens and the use of SLIAG funds is unavoidable.

We share the commenter's concern that if the regulation requires States to identify and track eligible legalized aliens who use the public health system, then it may become a deterrent. Consequently, the final rule, as well as the proposed rule, contains a method for establishing SLIAG-related costs associated with public health which does not require identification of eligible legalized aliens. The use of this method is optional. (See Subpart C.)

Comment (Track Fiscal Years Separately)

Two commenters objected to the requirement that each year's appropriation be tracked separately.

Response

It is the State's responsibility to maintain adequate fiscal records to

support the costs claimed under SLIAG. Since SLIAG funds may not be used for costs incurred in a prior fiscal year, we believe each State must track each year's appropriation separately to demonstrate that SLIAG funds were used for costs incurred in that fiscal year. The separate tracking of grant funds by fiscal year is standard in most HHS programs. We see no basis for an exception for SLIAG.

Reporting

Section 204(e)(1)(A) of the Act requires States to submit to the Secretary annual reports containing such information as will allow the Secretary: (1) To secure an accurate description of activities funded under SLIAG; (2) to secure a complete record of the purposes for which SLIAG funds were spent, including the recipients of such funds; and, (3) to determine the extent to which funds were expended consistent with the Act and this Part. In addition, section 204(e)(1)(B) of the Act requires the Secretary to report annually to Congress on activities funded under SLIAG and to provide copies of his report to the States.

The final regulation requires States to submit annual fiscal reports to the Department. These reports must report the status of SLIAG funds, including: (1) Identification of the amount obligated and the amount expended by the grantee agency; (2) the amount remaining unobligated which the State intends to carry forward to the succeeding fiscal year; and, (3) any amount unobligated which the State does not desire to carry forward. States' fiscal reports must be submitted on SF-269.

We have deleted the requirement that States' fiscal reports contain status of funds (expenditure) information for recipients other than the administering agency. We concluded that this information was unnecessary for Federal administration of the program and its reporting would have been unduly burdensome for States.

We have eliminated the proposed requirement for a separate program report. We have amended the requirement for States' reporting of actual SLIAG-related costs under § 402.51(e) to include amounts of SLIAG grant funds obligated in each program or activity in which SLIAG-related costs were incurred. This approach provides us with the minimum information necessary to provide program oversight and to fulfill our requirement to report to Congress on the use of SLIAG funds and reduces considerably the amount of information that States are required to report to us.

We have amended the proposed rule to require that State reports on actual SLIAG-related costs pursuant to § 402.51(e) must contain the same information and level of detail as State applications.

We have added the requirement that the report must contain a description of the methodology used to determine actual costs, if the methodology is different from the description provided in the State's application. We have also added a requirement that this report contain information on the State and Federal costs of providing assistance under Medicaid to eligible legalized aliens who adjusted status under section 245A or 210A (but not section 210), as explained below.

These reports must be submitted within 90 days from the end of the Federal fiscal year.

If a State fails to submit a final report or if the State's final report does not contain data on actual SLIAG-related costs, we will not count any costs for that year in the calculation of future years' allocations.

Comments received on our proposed rules concerning reporting are addressed below:

Comment (Level of Detail for Required Information)

We are required by law to consult with the General Accounting Office, as well as States, on reporting requirements for SLIAG. The General Accounting Office recommended that we require States to report considerably more information than is included in the final rule.

Response

We believe that the information sought by the General Accounting Office can be obtained in other ways, including a survey which the INS has commissioned, voluntary reports from States with large numbers of ELAs, and program reviews.

Comment (Involvement of Non-Profit Agencies)

One commenter requested that State annual reports identify efforts made by the State to involve non-profit agencies in the provision of services under SLIAG.

Response

This information is not necessary either for Federal administration of SLIAG or for the report which the Secretary is required to submit to Congress. Therefore, we have not incorporated this suggestion into the final regulation.

Comment (Reporting on SAWs)

A few commenters urged that State reporting and voluntary cost estimates include the number of SAWs, and the types and services provided to them.

Response

We recognize that subgroups of eligible legalized aliens may place different demands on State and local government programs. However, information on these subgroups is neither required by the Act nor necessary for Federal administration. Therefore, we are not requiring by regulation the reporting of this information or information on other subgroups of the eligible legalized alien population (e.g., nationalities or ethnic groups).

Comment (90 days)

Several commenters suggested that the requirement that the annual report be submitted within 90 days after the close of the fiscal year is too stringent.

Response

We proposed a due date of 90 days after the end of the fiscal year because that is the standard requirement under 45 CFR Part 74, Administration of Grants, which governs SLIAG. However, in response to public comments, we have modified the final rule. As noted above, we have deleted from the State financial status report and report on activities information on recipients' status of funds. The requirement in the final regulation now corresponds to the fiscal information normally required of State grantees. Consequently, we see no need to extend the due date of this report beyond 90 days after the end of the fiscal year.

Comment (Data for Federal Offset)

Two commenters recommended requiring States to report information necessary to determine the Federal offset. One commenter suggested recomputing the Federal offset on a quarterly basis.

Response

We have changed the final rule to require States' actual SLIAG-related cost reports to show Federal and State/local costs associated with providing Medicaid assistance to aliens who have adjusted status under section 245A or 210A. We are not requiring the separate reporting of such data for aliens who have adjusted under section 210 (special agricultural workers). Costs associated with this latter group are not part of the offset.

We concluded that this is the most efficient method to obtain information

on what we expect will be the largest single component of the Federal offset to SLIAG. We do not expect that this requirement will impose a significant burden on States. Based on consultations with State officials and public comment on the proposed rule, we believe that most States will be tracking Medicaid costs associated with eligible legalized aliens in order to claim SLIAG reimbursement for the State/local share of those costs.

We have concluded that requiring similar data on other programs included in the offset would be impractical. Most programs of financial assistance (as defined in section 245A(h)(1) of the Act and Department of Justice regulations) will involve very small amounts that could be included in the Federal offset. Further, these programs are funded primarily with Federal monies. Therefore, we do not expect that States will be tracking costs associated with eligible legalized aliens in these programs.

Recomputing the offset on a quarterly basis would involve more frequent reporting by States. We concluded that this would be unduly burdensome and have not adopted this suggestion.

Comment (Caseload Data)

One commenter recommended that the annual report include caseload data for public assistance and enrollment data for educational services, as well as information on the amount of funding each unit of government received, by program type.

Response

If a State chooses to include caseload and enrollment data in its annual report, we will incorporate such information in our report to Congress. However, because this information is not necessary for Federal program administration, in an effort to keep recordkeeping and reporting requirements to a minimum, we have not required submission of this information.

Comment (Data for Each Unit of Government)

Two commenters suggest that the annual report contain, in addition to the amount of actual SLIAG-related costs incurred for each unit of government, information on the amount of funding each unit of government received.

Response

The final regulation requires States to show the amount of SLIAG funds obligated to each program or activity in which SLIAG-related costs were incurred in the fiscal year. This corresponds to the level of detail

required in States' applications. A further breakdown by units of government is not necessary for Federal administration or reporting purposes. We are therefore not requiring this information to be reported to us.

Comment (Information on Unobligated Balances)

One commenter requested clarification concerning the Department's use of information on amounts remaining unobligated at the end of the fiscal year, and recommended that States should not be penalized for exercising their option to carry over funds within the allowable expenditure time periods.

Response

There is no intent to penalize States for exercising their option to carry over funds. The Act provides that funds allotted by us to a State are available for use (which we interpret to mean obligation) by a State until September 30, 1994. Only those amounts remaining unobligated at the end of the fiscal year which the State specifically indicates in its fiscal report that it does not desire to carry over to the succeeding fiscal year will be deobligated.

Comment (Uniform Format)

One commenter suggested that there should be a uniform format for the reporting of costs.

Response

We require the use of SF-269 for reporting of status of funds information at the State level. This form is required in most HHS grant programs.

We will work with States to develop a model reporting format to promote the efficient and consistent reporting of data. Use of this model format would be optional.

We are also interested in working with States to develop compatible formats for the end-of-year reports and the cost data in State applications. We wish to avoid the need for States to resubmit information previously submitted to us. For example, if the State's application contained a description of activities, those descriptions need not be repeated in its end-of-year report. We recommend that States adopt a cross-referencing system to avoid the submission of duplicative information.

Comment (Provider Information)

One commenter expressed the belief that States should be able to provide a short narrative description of program service components, including an

estimate of the number of providers of specific services, to satisfy the report needs.

Response

We have deleted the requirement that States report to us the providers of services. Instead, States must report on programs and activities, as is required in State applications, which provide for a short narrative description.

As noted above, we intend to work with States to develop a voluntary model reporting format to further clarify the type of information to be reported.

FY 1988 Voluntary SLIAG-Related Cost Estimate Submissions

We have deleted the voluntary SLIAG-related cost report from the regulation. Such information is now required as part of States' applications under Subpart E.

Comment (Make Voluntary Report Mandatory)

One commenter recommended making the voluntary cost report mandatory, noting that only States who received too little funds would have an incentive to submit this report. States that had received a higher allocation than they should have would have no incentive to submit the report. Two other commenters recommended incorporating the "common sense data standards" included in the preamble to the proposed rule into the regulation. Still another notes that the cost reports required under the proposed rule do not provide sufficient detail to permit Federal evaluation of whether the costs are consistent with statutory and regulatory provisions. This commenter advocated requiring for each fiscal year the same level of detail as would have been contained in the voluntary cost estimates.

Response

As noted above, the final rule requires that States provide updated cost estimates for the current fiscal year as part of their applications. This accomplishes what the commenters suggested. In addition, it provides the data necessary to ensure accurate and equitable allocations of SLIAG funds.

Executive Order

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules, defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects. The Department concludes that the regulation implementing this grant program does not constitute a major rule

within the meaning of the Executive Order because it does not have an effect on the economy of \$100 million or more or otherwise meet the threshold criteria.

We have determined that executive order 12372 does not apply. Similarly, form 424 does not apply to these regulations.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on States, which are not "small entities" within the meaning of the Act. Actual delivery of services will be performed primarily by State and local government agencies. Because this regulation provides States with great authority to prescribe management, organization, funding, and eligibility practices for service delivery, they do not directly impact small entities, either favorably or adversely. Instead, their impacts will depend on future State decisions.

We are not required to perform a regulatory impact analysis where the effect of the proposed regulation is speculative, and will be caused by decisions made independently of the Federal government. Therefore, the Secretary hereby certifies that a regulatory flexibility analysis is not required.

Effective Date

Because this regulation is necessary for States to apply for funds for Fiscal Year 1988 and to implement the SLIAG program, we are not using the customary 30-day effective date, but are making these rules effective upon publication.

Paperwork Reduction Act

Sections 402.41, 402.45, 402.50 and 402.51 of this final rule contain information collection requirements. The application requirement contained in this final rule is effective upon publication of the final rule, and has been approved under OMB No. 0970-0079. As required by the Paperwork Reduction Act of 1980, the Department will submit other information collection requirements to the Office of Management and Budget for its review. Organizations and individuals desiring

to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Executive Office of the President, New Executive Office Building (Room 3002), Washington, DC 20503, ATTN: Desk Office for Family Support Administration. After OMB approval is obtained, we will publish the OMB Control number in the Federal Register.

List of Subjects

45 CFR Part 16

Administrative practice and procedure, Grant programs—health, Grant programs—social programs.

45 CFR Part 402

Administrative Cost, Allocation Formula, Aliens, Allotment, Education, Grant Programs, Immigration, Immigration Reform and Control Act, Public Assistance, Public Health Assistance, Reporting and Recordkeeping Requirements, State Legalization Impact Assistance Grants.

Dated: January 26, 1988.

Wayne A. Stanton,
Administrator, Family Support
Administration.

Approved: February 4, 1988.

Otis R. Bowen,
Secretary.

Title 45 of the CFR, Subtitle A and Chapter IV, are amended as follows:

1. Part 402 is added to 45 CFR Chapter IV to read:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

Subpart A—Introduction

- 402.1 General.
- 402.2 Definitions.

Subpart B—Use of Funds

- 402.10 Allowable use of funds.
- 402.11 Limitations on Use of SLIAG funds.
- 402.12 Use of SLIAG Funds for costs incurred prior to October 1, 1987.

Subpart C—Administration of Grants

- 402.20 General provisions.
- 402.21 Fiscal control.
- 402.22 SLIAG and program administrative costs.
- 402.23 Repayment.
- 402.24 Withholding.
- 402.25 Appeals.
- 402.26 Time period for obligation and expenditure of grant funds.

Subpart D—State Allocations

- 402.30 Basis of awards.
- 402.31 Determination of allocations.
- 402.32 Determination of state allotments.

402.33 Allotment of excess funds.

Subpart E—State Applications

- 402.40 General.
- 402.41 Application content.
- 402.42 Application format.
- 402.43 Application deadline.
- 402.44 Basis for approval.
- 402.45 Amendments to applications.

Subpart F—Recordkeeping and Reporting

- 402.50 Recordkeeping.
- 402.51 Reporting.

Authority: Sec. 204, Pub. L. 99-603.

Subpart A—Introduction

§ 402.1 General.

These regulations implement section 204 of Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA), which establishes State Legalization Impact Assistance Grants (SLIAG) for States for fiscal year 1988 and for each of the three succeeding fiscal years. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. Funds appropriated by this section may be applied by States with approved applications to certain State and local government costs incurred in providing public assistance and public health assistance to eligible legalized aliens and for making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens.

§ 402.2 Definitions.

As used in this Part—

"The Act" means the Immigration Reform and Control Act of 1986, Pub. L. 99-603.

"Allocation" means an amount designated for a State for a fiscal year, as determined under § 402.31.

"Allotment" means the total amount awarded to a State for a fiscal year, as determined under § 402.32 or, if applicable, § 402.33.

"Department" means the U.S. Department of Health and Human Services.

"Educational Services" means:

(1) For eligible legalized aliens regardless of age enrolled in elementary or secondary school, services allowable under section 607 of the Emergency Immigrant Education Act, 20 U.S.C. 4101, et seq. (Pub. L. 98-511), as in effect on November 6, 1986.

(2) For adult eligible legalized aliens:

(i) Services authorized under the Adult Education Act, 20 U.S.C. 1201 et

seq. (Pub. L. 89-750, as amended), as in effect November 6, 1986, and

(ii) English language and other programs designed to enable eligible legalized aliens to attain the citizenship skills required by section 245A(b)(1)(D)(i) of the INA.

"Eligible legalized alien" means an alien whose status has been adjusted to lawful temporary resident under section 245A, 210, or 210A of the Immigration and Nationality Act, beginning on the effective date of such adjustment as established by the Immigration and Naturalization Service, and continuing until the end of the five-year period beginning on the effective date of such adjustment, provided that during that time the alien remains in lawful temporary or permanent resident status granted under the Act.

"INA" means the Immigration and Nationality Act, 8 U.S.C. 1101, et seq.

"Local educational agency" means—

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

"Local government" has the same meaning as in 45 CFR Part 74.

"Nonpublic," as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"Public," as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"Public assistance" means cash, medical, or other assistance provided to meet the basic subsistence needs or health needs of individuals

(1) That is generally available to needy individuals residing in a State and

(2) That is provided with funds from units of State or local government. As used in this definition, basic subsistence needs are minimal living requirements, including food, shelter and clothing. For purposes of this definition, assistance is considered to

have been provided to needy individuals if specified income or resource requirements are used to determine eligibility or the amount of a fee or other charges to be paid for services. "Other assistance" means assistance and services, other than cash or medical assistance, that are directed at meeting basic subsistence needs, and that meet all of the criteria in this definition.

"Other assistance" also means assistance and services in which participation is required as a condition of receipt of cash or medical assistance.

"Public health assistance" means health services (1) that are generally available to needy individuals residing in a State; (2) that receive funding from units of State or local government; and, (3) that are provided for the primary purpose of protecting the health of the general public, including, but not limited to, immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services.

"Recipient" has the same meaning as in 45 CFR Part 74.

"Secretary" means the Secretary of the Department of Health and Human Services.

"SLIAG-related costs" means expenditures made to provide public assistance, public health assistance, or educational services, as defined in this Part, to eligible legalized aliens, as defined in this Part, regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this Part. SLIAG-related costs for education are limited to the amount of payment that can be made under the Act for educational services, as described in § 402.11(e). SLIAG-related costs exclude: (1) expenditures by a State or local government for costs which are reimbursed or paid for by Federal programs other than SLIAG; and (2) program income (as defined in 45 CFR 74.42) received from or on behalf of eligible legalized aliens receiving services or benefits for which payment or reimbursement may be made under this Part.

"State" means the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

"State educational agency" means—

(1) The State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law; or

(2) The State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools; or if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then that agency or officer may be designated for the purpose of the Act by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, the term means an appropriate agency or officer designated for the purpose of the Act by the Governor.

Subpart B—Use of Funds

§ 402.10 Allowable use of funds.

(a) Funds provided under this Part for a fiscal year may be used only with respect to allowable SLIAC-related costs incurred in that fiscal year or succeeding fiscal years in providing assistance with services to eligible legalized aliens subject to § 402.26(a). States may use funds for:

(1) Public assistance, public health assistance, and educational services provided to eligible legalized aliens;

(2) Public health assistance provided to an alien applying on a timely basis to become an eligible legalized alien under section 245A of the INA, but not to those applying under section 210 or 210A of the INA.

(3) SLIAG and program administrative costs, as described in § 402.22 (a) and (b).

(b) Unless specifically prohibited by a statute enacted subsequent to November 6, 1986, a State may use SLIAG funds to pay the non-Federal share of costs allowable under (a) of this section incurred in providing assistance or services to eligible legalized aliens under Federal programs that have a matching or cost-sharing requirement, subject to the provisions of § 402.11(f) of this Part.

(c) To the extent consistent with 45 CFR Part 74 and § 402.22 of this Part, funds provided under this Part may be used for State and local costs associated with meeting the administrative requirements established by the Act and this Part and the administrative costs associated with providing assistance or services to eligible legalized aliens under a program or activity that receives funds under this Part.

(d) Funds under this Part may be used to reimburse or pay costs of providing assistance or services to eligible legalized aliens that are incurred prior to the approval of a State's FY 1988 application and, for all fiscal years, prior to the approval of a State's amendment to its application, pursuant to Subpart E

of this Part, provided that such reimbursement or payment is consistent with the Act and this Part.

§ 402.11 Limitations on Use of SLIAG Funds.

(a) Funds provided under this Part that are used for public assistance, public health assistance, and educational services may only be used only with respect to programs in a State or local jurisdiction that (1) meet the definitions of § 402.2, above, and (2) are otherwise consistent with the rules and procedures governing such programs.

(b) Funds provided under this Part may not be used for costs to the extent that those costs are otherwise reimbursed or paid for under other Federal programs.

(c) Funds provided under this Part may be used to reimburse State and/or local expenditures associated with providing public assistance and public health assistance to eligible legalized aliens and to make payments to State educational agencies for the purpose of providing educational services to eligible legalized aliens. However, the amount of reimbursement or payment may not exceed 100 percent of SLIAG-related costs, as defined in this Part, associated with providing public assistance, public health assistance, and educational services.

(d) A State must use a minimum of 10 percent of its allotment under this Part in any fiscal year for costs associated with each of the following program categories: public assistance, public health assistance, and educational services. In the event that a State does not require use of a full 10 percent in one of the above categories, it must allocate the unused portion equally among the remaining categories.

(e) Payments for educational services in any fiscal year may not exceed the amounts described in (e) (3), (4) and (5) of this section, and are subject to the limitations in (e) (1), (2), and (6) of this section.

(1) Payments may be made to a local educational agency in a fiscal year for the purpose of providing educational services to eligible legalized aliens enrolled in elementary or secondary school only if 500 eligible legalized aliens meeting the conditions in (e)(2) of this section, are enrolled in elementary or secondary public or non-public schools in that local educational agency's jurisdiction in that fiscal year or if such eligible legalized aliens represent at least 3 percent of the total number of students enrolled in elementary or secondary public or non-public schools within that local

educational agency's jurisdiction in that fiscal year.

(2) In computing payments to local education agencies or to providers of educational services described in section 204(c)(3)(C) of the Act, State educational agencies may take into account only eligible legalized aliens who have been enrolled in elementary or secondary school, public or non-public school or in educational activities for adults described in § 402.2 in the United States for fewer than three complete academic years.

(3) The amount that may be paid in any fiscal year to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary public or non-public school may not exceed an amount equal to \$500 (less, in States receiving Emergency Immigrant Education Act (EIEA) funds, the amount described in (e)(6) of this section) multiplied by the number of eligible legalized aliens meeting the criteria specified in (e)(2) of this section, who are enrolled in public or private non-profit elementary and secondary schools in the jurisdiction of that local educational agency in that fiscal year.

(4) The amount that may be paid in any fiscal year to a local educational agency or other provider of educational services for adults (who are not enrolled in elementary or secondary school), as described in section 204(c)(3)(C) of the Act, may not exceed an amount equal to \$500 multiplied by the number of eligible legalized aliens meeting the criteria in paragraph (e)(2) of this section who receive educational services from that provider in that fiscal year.

(5) In no event may the amount paid to a local education agency or other provider of educational services exceed the actual cost of providing those services to eligible legalized aliens, as determined in accordance with this Part and 45 CFR Part 74.

(6) The maximum amount of payment to a local educational agency with respect to eligible legalized aliens enrolled in elementary and secondary school will be reduced from the amount described in (e)(3) of this section, by an amount equal to the amount of funds received by the local educational agency with respect to such eligible legalized aliens pursuant to section 606 of the Emergency Immigrant Education Act.

(f) Funds provided under this Part may not be used to provide assistance under the programs of financial assistance from which eligible legalized aliens are barred by section 245A(h)(1), 210(f), or 210A(d)(6) of the INA. However, such funds may be used for the State and local share of the costs of

providing such assistance to eligible legalized aliens who are excepted from the bar by section 245A(h) (2) or (3), 210(f), or 210A(d)(6) of the INA, provided that such individuals are otherwise eligible for benefits under such programs, and that the costs of providing those benefits are otherwise allowable under the Act, this regulation, and the State's approved application.

(g) Funds provided under this Part shall not be used to perform abortions except where the life of the mother would be endangered if the fetus were carrier to term.

(h) Funds provided under this Part shall not be used to reimburse or pay costs incurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(j) (52 FR 16212, May 1, 1987) or 8 CFR 210.2(d) (52 FR 16201, May 1, 1987).

§ 402.12 Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987.

(a) Except as indicated in (b) and (c) of this section, States may not use funds provided under this Part of costs incurred prior to October 1, 1987.

(b) A State may use funds provided under this Part for administrative costs incurred prior to October 1, 1987, but after November 6, 1986, that are directly associated with implementation of this Part. Such costs may include planning, preparing the application, establishing fund accounting and reporting systems, data development associated with the application, and other costs directly resulting from planning for implementation of this Part.

(c) A State may use funds provided under this Part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health services to eligible legalized aliens and to applicants for lawful temporary residence under section 245A of the INA, in conformity with the provisions of § 402.10(a).

Subpart C—Administration of Grants

§ 402.20 General provisions.

Except where otherwise required by Federal law, the Department's rules located at 45 CFR Part 74, relating to the administration of grants, apply to funds provided under this Part.

§ 402.21 Fiscal control.

(a) Fiscal control and accounting procedures must be sufficient to permit preparation of reports required by the Act, this regulation, and other applicable statutes and regulations.

(b) States must have accounting procedures in place which allow funds

provided under this Part to be traced from drawdown to allowable SLIAG-related costs. Allowability of the amount and purpose of expenditures must be established for each recipient of SLIAG funds. States must demonstrate that SLIAG-related costs, as defined in this Part, incurred in providing assistance or services to eligible legalized aliens equal or exceed the amount of SLIAG funds provided for those particular assistance and service activities. Documentation of the method of accounting and appropriate supporting information must be available for audit purposes and for Federal program reviews. To establish allowability of expenditures, States may use methods prescribed in (c) of this section. Alternatively, the State may use any other reliable method of cost calculation, subject to Federal review.

(c)(1) For public assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive assistance and/or services from the recipient, or by use of a statistically valid sampling of a recipient's public assistance caseload.

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive such assistance and/or services, by use of a statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

(3) For educational services, States must be able to demonstrate that:

(i) Funds provided under this Part were used to provide educational services, as defined in this Part, to eligible legalized aliens, as defined in this Part; and,

(ii) Payments to local educational agencies or other providers of educational services, as described in section 204(c)(3)(C) of the Act, did not exceed the amounts described in § 402.11(e) of this Part.

§ 402.22 SLIAG and program administrative costs.

(a) SLIAG administrative costs allowable under this Part include the direct and indirect costs related to administration of this Part, including: planning and consultation with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

(b) Program administrative costs are those costs associated with administering allowable assistance or services provided to eligible legalized aliens. Such costs may be based: On the proportion of eligible legalized aliens provided assistance and/or services allowable under this Part by a recipient, relative to all persons provided such assistance and/or services; on the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this Part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this Part by the recipient; or, on such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this Part are allowable, allocable to SLIAG, and reasonable.

(c) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this Part.

§ 402.23 Repayment.

The Department will order a State to repay amounts found not to have been expended in accordance with Federal law, regulations, the State's approved application, or terms of the State's grant. If a State refuses to repay such amounts, the Department may offset the amount against any other amount to which the State is or may become entitled under this Part.

§ 402.24 Withholding.

After notice and opportunity for a hearing, the Secretary may withhold payment of funds to any State which is not using its allotment in accordance with the Act, these regulations, 45 CFR Part 74, and terms of the grant award.

§ 402.25 Appeals.

Appeals under this Subpart will be subject to 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board.

§ 402.26 Time Period for Obligation and Expenditure of Grant Funds.

(a) Any amount awarded to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to the State for obligation in subsequent fiscal years, but not after September 30, 1994.

(b) Obligations by the State must be liquidated within 12 months of the end of the Federal fiscal year in which the obligation was made. However, where a State can demonstrate extenuating

circumstances that prohibit compliance with this requirement, the Secretary may extend such date upon request by the State.

Subpart D—State Allocations

§ 402.30 Basis of awards.

The Secretary will award funds in a fiscal year to States with approved applications for that fiscal year in accordance with the apportionment of funds from the Office of Management and Budget. The grant award constitutes the authority to draw and expend funds for the purposes set forth in the Act and this regulation.

§ 402.31 Determination of allocations.

(a) *Allocation formula.* Allocations will be computed according to a formula using the following factors and weights:

(1) 50 percent based on the State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher-than-average ratios of eligible legalized aliens to total population relative to the average for all States, based on the proportional number of such aliens; and

(2) 50 percent based on the ratio of SLIAG-related costs in a State to the total of all such costs in all States.

(b) *Calculation of allocations.* Each time the Department calculates State allocations, we will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State. Allocations will be calculated as follows:

(1) *Initial FY 1988 allocations.* In FY 1988, initial State allocations will be calculated by applying the formula described in (a) of this section to 50 percent of the SLIAG funds available for grants to States in FY 1988. SLIAG-related costs will be based on Federal estimates of such costs.

(2) *Final FY 1988 allocations.* Final allocations for FY 1988 will be calculated by applying the formula described in (a) of this section to 100 percent of the SLIAG funds available for grants to States for FY 1988. SLIAG-related costs for FY 1987 and FY 1988 will be obtained from States' FY 1989 applications, as required by § 402.41(c). (If a State does not submit an application for FY 1989, it still must submit the information described in paragraph 402.41(c) in order to receive its final allocation for FY 1988.)

(3) *FY 1989 allocations.* Allocations for FY 1989 will be determined by applying the allocation formula described in (a) of this section to the

total amount of funds available for grants to States in FY 1988 and FY 1989. For purposes of calculating State allocations, the Department will use the SLIAG-related costs for FY 1987, FY 1988, and FY 1989 reported in each State's application submitted pursuant to § 402.41(c) of this Part, as approved by the Secretary.

(4) *FY 1990 allocations.* Allocations for FY 1990 will be determined by applying the allocation formula described in paragraph (a) of this section to the total amount of funds available for grants to States in FY 1988, FY 1989, and FY 1990. For purposes of calculating FY 1990 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987 and FY 1988, the report required by § 402.51(e). In the event that a State has not submitted this report, the Department will include no costs for FY 1987 or FY 1988 for that State in its calculation of FY 1990 allocations.

(ii) For FY 1989 and FY 1990, the estimates of SLIAG-related costs contained in States' applications submitted pursuant to § 402.41(c) of this Part, as approved by the Secretary.

(5) *Initial FY 1991 Allocations.* Initial FY 1991 allocations will be calculated by applying the formula described in (a) of this section to the total amount of funds made available for grants to States for FY 1988, FY 1989, and FY 1990, plus 75 percent of funds available for grants to States for FY 1991. For purposes of calculating FY 1991 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987, FY 1988, and FY 1989, the reports required by § 402.51(e). In the event that a State has not submitted a report for a fiscal year, the Department will include no costs for that fiscal year for that State in its calculation of initial FY 1991 allocations.

(ii) For FY 1990 and FY 1991, the estimates of SLIAG-related costs contained in the States' applications submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

(6) *Final FY 1991 Allocations.* Final allocations for FY 1991 will be determined by applying the allocation formula described in (a) of this section to the total amount of funds available for grants to States in FY 1988, FY 1989, FY 1990, and FY 1991. For purposes of calculating FY 1991 State allocations, the Department will use the following sources of data for SLIAG-related costs:

(i) For FY 1987, FY 1988, FY 1989, and FY 1990, the reports required by § 402.51(e). In the event that a State has not submitted a report for a fiscal year, the Department will include no costs for

that fiscal year for that State in its calculation of final FY 1991 allocations.

(ii) For FY 1991, the estimates of SLIAG-related costs contained in the States' applications submitted pursuant to § 402.41(c) of this part, as approved by the Secretary.

§ 402.32 Determination of state allotments.

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) (2) through (6) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) (2) through (6) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) (2) through (6) and the amounts previously awarded to those States. For purposes of determining final FY 1988 State allotments, the amount previously allotted to a State will be the amount allocated and awarded to the State pursuant to § 402.31(b)(1).

§ 402.33 Allotment of excess funds.

If a State fails to qualify for an allotment in a particular fiscal year because it did not submit an approvable application by the deadline established in § 402.43 of this Part, or is not allotted its designated allocation amount because it indicated in its application that it does not intend to use, in the fiscal year for which the application is made or in the succeeding fiscal year, the full amount of its allocation, funds which would otherwise have been allotted to the State in that fiscal year shall be allotted among the remaining States submitting timely approved applications in proportion to the amount that otherwise would have been allotted to such States in that fiscal year.

Subpart E—State Applications

§ 402.40 General.

In order to be eligible for funds available under this Part in a fiscal year, a State must submit an annual application. A State's application must be approved by the Secretary prior to the award of funds to that State.

§ 402.41 Application content.

A State application must:

(a) Contain certifications by the chief executive officer or an individual specifically designated to make such certifications on behalf of the chief executive officer that, notwithstanding other contents of the application, the State assures that:

(1) Funds allotted to the State will be used only to carry out the purposes described in the Act and this Part.

(2) The State will provide a fair method for the allocation of funds among State and local agencies (as determined by the State) in accordance with the information in the application as required under (b) and (c) of this section and in accordance with the provisions of § 402.11(d) of this Part, which sets forth minimum funding levels for program categories.

(3) Fiscal control and accounting procedures used in the administration of SLIAG funds will be established that are adequate to meet the requirements established by the Act and this regulation.

(4) The State will comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, and on the basis of sex or religion under section 204(h)(1)(B) of the Immigration Reform and Control Act of 1986.

(b) Contain information on the number of eligible legalized aliens residing in the State. A State may either (1) adopt as its official State-level estimate the estimate of the State's number of eligible legalized aliens provided by the Department, or (2) provide its own estimate, including detailed information on the method and data used in deriving the estimate.

(c)(1) Contain an estimate of likely SLIAG-related costs for the fiscal year for which application is being made for each program or activity in which SLIAG-related costs will be incurred. Programs and activities must be identified by purposes described in § 402.10(a), that is, public assistance, public health assistance, and educational services, and SLIAG administrative costs as defined in § 402.22 (a) and (c). Such estimates for FY 1988 should include, as a discrete subset, costs incurred in FY 1987, pursuant to § 402.12.

(2) For applications for FY 1989, FY 1990, and FY 1991, in addition to the information in (c)(1) of this section

contain updated estimates of SLIAG-related costs for each program or activity in which SLIAG-related costs have been or will be incurred in the fiscal year in which the application is being submitted. Programs and activities must be identified by the purposes described in § 402.10(a), that is, public assistance, public health assistance, educational services, and SLIAG administrative costs as defined in § 402.22(a). (SLIAG-related costs incurred in FY 1987 pursuant to § 402.12 of this Part are to be included, as a discrete subset, in the updated estimate of FY 1988 costs.)

(d) Contain the following information pertaining to the estimates required by (c) (1) and (2) of this section (the application must include sufficient detail to permit assessment by the Department of the reasonableness of such estimates and the allowability of such costs under the Act and this Part):

(1) Descriptions of the programs and activities for which SLIAG-related costs have been or will be incurred.

(2) Descriptions of the methodologies used to determine SLIAG-related cost. This description is to include (i) the methodology used in determining the proportion (or actual number) of eligible legalized aliens who are likely to participate in or benefit from the program or service, and (ii) a description of how a unit or other measure of the cost of providing services or benefits was calculated, or, if the estimate is based on actual cost data, a description of how the data were obtained.

(e) Contain information on the criteria for and administrative methods of disbursing funds received under this Part.

(f) Designate a single point of contact (SPOC) in the State responsible for securing and submitting information required by the Act and this regulation and provide the name, title, mailing address, and telephone number of such official. If the grantee agency is different from the SPOC, also provide the name, title, mailing address, and telephone number of the official in that agency responsible for State administration of funds available under this Part. In either case, provide the employer identification number of the grantee agency.

If a State has previously provided this information to the Department, it need not be included in the application unless the information has changed.

§ 402.42 Application format.

A State may determine the format of its application as long as it contains all the information required by § 402.41.

§ 402.43 Application deadline.

(a) An application from a State for SLIAG funds for Federal fiscal year 1988 must be received by the Department by May 16, 1988. Applications for Federal fiscal years 1989, 1990, and 1991 must be received no later than July 15, 1988, July 15, 1989, and July 15, 1990, respectively. If a State fails to submit an application by these dates, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this Part.

(b) In order to receive funds under this Part for FY 1988, a State's application must be approvable by the Secretary by July 1, 1988. In order to receive funds under this Part for FY 1989, FY 1990, and FY 1991, a State's application must be approvable by the Secretary by October 1, 1988, October 1, 1989, and October 1, 1990, respectively. This may necessitate a State's providing clarification, revision, or additional material, as required, to render its application approvable by the Secretary. If a State fails to render its application approvable by the Secretary by these dates, funds which it may otherwise have been eligible to receive shall be distributed among States which have submitted approvable applications in accordance with § 402.32 of this Part.

§ 402.44 Basis for approval.

(a) The Department will review each State's application to ensure that it contains all of the required assurances and information and otherwise is consistent with the Act and this Part.

(b) The Department will assess the reasonableness of each State's estimates of SLIAG-related costs, as required by § 402.41(c) (1) and (2), based on the following:

(1) Are the activities for which estimates are included in the application allowable under the Act and this Part?

(2) Are the rates of participation by eligible legalized aliens in the activities for which estimates of SLIAG-related costs are included in the application and other assumptions underlying the cost estimates based on reliable empirical data?

(3) To what extent are the estimates based on actual costs incurred? Are actual costs based on methodologies described in this Part or other methodologies likely to result in valid measures of SLIAG-related costs?

(4) Do current estimates appear to be consistent with past estimates, known actual costs pursuant to § 402.41(c)(2), and current INS eligible legalized alien population data?

(5) Are revised estimates a result (all or in part) of changes in program activities?

(c) The Department will notify the State that (1) its application has been approved or (2) its application has been disapproved, together with the reasons for disapproval.

§ 402.45 Amendments to applications.

(a) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment (containing appropriate information pursuant to § 402.41(c)) to its approved application for that fiscal year.

(b) A State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG-related costs for programs or activities described in (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d). Costs incurred prior to October 1, 1987, are allowable only to the extent described in § 402.12.

Subpart F—Recordkeeping and Reporting

§ 402.50 Recordkeeping.

A State must provide for the maintenance of such records as are necessary:

(a) To meet the requirements of the Act and Department regulations relating to retention of and access to records.

(b) To allow the State to provide to the Department (1) an accurate description of its activities undertaken with SLIAG funds, and (2) a complete record of the purposes for which SLIAG funds were spent, and of the recipients of such funds; and

(c) To allow the Department and auditors of the State to determine the extent to which SLIAG funds were expended consistent with the Act and this regulation.

§ 402.51 Reporting.

(a) After the end of a Federal fiscal year for which it received or during which it obligated or expended SLIAG funds and by the due date indicated below, a State must submit annual reports containing the information identified in (c) and (e) of this section. The reports are due no later than 90 days after the end of a Federal fiscal year.

(b)(1) Failure to submit the annual report required in (a) of this section by the deadline, without prior written permission from the Secretary, constitutes a basis for withholding of SLIAG funds.

(2) Failure by a State to submit the required information prior to the calculation of allocations pursuant to Subpart D will result in the Secretary's including no SLIAG-related costs for the fiscal year for that State in the calculation of State allocations.

(c) A State's annual report must provide information on the status of each fiscal year's funds, as of September 30, for the fiscal year, including:

(1) Identification of the amount obligated and the amount expended by the State grantee agency;

(2) Identification of any amount remaining unobligated at the end of the fiscal year which the State intends to carry over to succeeding fiscal years; and,

(3) Identification of any amount remaining unobligated at the end of the fiscal year which the State does not desire to carry over to the succeeding fiscal year.

(d) A State must use SF-269 in its reporting under paragraph (c) of this section, but it may determine the format of its annual report content under paragraph (e) of this section.

(e) A State's annual report must also provide the actual SLIAG-related costs incurred during the fiscal year. The report must provide for each program or activity identified in the State's application, the amount of the actual SLIAG-related costs incurred in that program or activity, identified as public assistance, public health assistance, educational services and SLIAG administrative costs, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated. The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41(d)(2). Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A(h) (2) and (3) of the INA) must be shown separately in States' reports.

PART 16—PROCEDURES OF THE DEPARTMENT GRANT APPEALS BOARD

2. The authority citation for Part 16 continues to read as follows:

Authority: U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

3. Appendix A to Part 16 is amended

by adding paragraph B(a)(6) to read as follows:

Appendix A—What Disputes the Board Reviews

B * * *

(a) * * *

(6) Decisions relating to repayment and withholding under State Legalization Impact Assistance Grants as provided in 45 CFR 402.24 and 402.25.

[Editorial Note: The following appendix will not appear in the Code of Federal Regulations]

APPENDIX A—INITIAL FISCAL YEAR 1988 STATE ALLOCATIONS¹

State	Initial fiscal year 1988 allotments	Percent of total
Alabama	\$166,699	0.04
Alaska	81,654	0.02
Arizona	9,049,692	1.95
Arkansas	223,124	0.05
California	265,474,263	57.18
Colorado	3,490,505	0.75
Connecticut	605,758	0.13
Delaware	113,208	0.02
District of Columbia	1,213,785	0.26
Florida	30,185,210	6.50
Georgia	1,540,491	0.33
Guam	68,954	0.01
Hawaii	320,837	0.07
Idaho	2,140,670	0.46
Illinois	25,466,533	5.49
Indiana	399,338	0.09
Iowa	166,951	0.04
Kansas	911,540	0.20
Kentucky	99,131	0.02
Louisiana	542,382	0.12
Maine	16,153	0.00
Maryland	1,668,084	0.36
Massachusetts	1,864,367	0.40
Michigan	845,998	0.18
Minnesota	230,185	0.05
Mississippi	93,147	0.02
Missouri	314,232	0.07
Montana	31,919	0.01
Nebraska	313,480	0.07
Nevada	2,402,191	0.52
New Hampshire	50,406	0.01
New Jersey	4,960,772	1.07
New Mexico	4,680,790	1.01
New York	25,352,775	5.46
North Carolina	2,173,803	0.47
North Dakota	8,822	0.00
Ohio	451,151	0.10
Oklahoma	3,104,006	0.67
Oregon	3,882,975	0.84
Pennsylvania	1,238,964	0.27
Puerto Rico	755,788	0.16
Rhode Island	408,571	0.09
South Carolina	432,200	0.09
South Dakota	18,811	0.00
Tennessee	269,203	0.06
Texas	55,089,079	11.87
Utah	1,089,246	0.23
Vermont	23,474	0.01
Virgin Islands	66,283	0.01
Virginia	2,058,791	0.44
Washington	6,955,042	1.50
West Virginia	69,990	0.02
Wisconsin	796,138	0.17
Wyoming	272,436	0.06
Total	464,250,000	100.00

¹ Based on one-half of fiscal year 1988 appropriation.

[FR Doc. 88-5017 Filed 3-9-88; 8:45 am]

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1988
March 10
Thursday
Part III
Securities and
Exchange
Commission
17 CFR Part 230
Regulation D Revisions, and Agency
Information Collection Activities Under
OMB Review; Rule, Proposed Rule and
Notice

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Part III
**Securities and
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Commission**

17 CFR Part 230

Regulation D Revisions, and Agency
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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6758; File No S7-1-87]

Regulation D Revisions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of several amendments to the rules comprising Regulation D which provides for certain exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act"). The revisions expand the "accredited investor" definition, eliminate the \$150,000 purchaser of securities from that definition, increase the total offering amount permitted for certain Rule 504 offerings, and revise general solicitation restrictions under Rule 504 for certain state registered offerings. Disclosure standards for offerings of less than \$2 million also have been simplified to parallel more closely requirements applicable to Regulation A offerings. Certain technical revisions have been made to the regulation, as proposed.

EFFECTIVE DATE: April 11, 1988. For offerings commenced but not completed prior to this date, issuers may opt to follow the rules in effect at the date of commencement.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen M. O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On January 16, 1987, the Commission published for comment¹ certain revisions to Regulation D,² the limited offering exemptive provisions from the registration requirements of the Securities Act.³ The proposals have been adopted substantially as proposed.

The revisions change the definition of accredited investor⁴ by including

additional institutional investors such as savings and loan associations, credit unions and broker-dealers, certain trusts, partnerships and corporations, permitting a joint as well as an individual income test for accrediting natural persons, and eliminating the \$150,000 purchaser of securities. The total offering price for Rule 504 transactions has been increased from \$500,000 to \$1 million, if at least \$500,000 is registered at the state level, and general solicitation now will be permitted under certain circumstances for offerings pursuant to Rule 504 in states which provide no qualifying registration procedure. A new level of disclosure, keyed to Regulation A,⁵ but requiring that a certified balance sheet of the issuer be prepared, has been adopted for offerings of less than \$2 million. The other technical revisions proposed for comment have been adopted. In a companion release issued today,⁶ the Commission is soliciting comment on a number of additional revisions to Regulation D, many of which address issues raised for comment in the Reg. D Release. These new proposals primarily respond to the comments received about adding a substantial or good-faith compliance provision to the regulation, and solicit comment on further changes to the accredited investor category.

I. Amendments to Regulation D

Regulation D provides for three different exemptions from the registration requirements of the Securities Act. Rule 504 is available for offerings of \$500,000 or less by companies not subject to the reporting provisions of the Securities Exchange Act of 1934 ("Exchange Act")⁷, but not investment companies as defined in the Investment Company Act of 1940.⁸ This rule imposes no limitation on the number of purchasers and in certain cases permits general solicitations of potential purchasers. Rule 505 may be used by any company, except investment companies, for offerings that do not exceed \$5 million. Subject to a prohibition of general solicitations, the number of accredited investors that may participate in a Rule 505 offering is unlimited; an additional 35 non-accredited investors, who need not be sophisticated, also may purchase. Rules 504 and 505 are promulgated under section 3(b) of the Securities Act. Rule 506 is the Commission's safe-harbor rule for the "non-public offering" exemption, established by section 4(2) of

the Securities Act. This rule is available to any issuer and there is no dollar limit as to the amount of funds which can be raised. However, there may be no general solicitation or advertising and sales can only be made to accredited investors and an additional 35 sophisticated investors.

A. Accredited Investors

The "accredited investor" is a central concept to all of the exemptions provided by Regulation D.⁹ The Commission proposed to expand the definition to include virtually all classes of institutional investors. The institutional investor category has been expanded to include savings and loan associations and similar institutions such as credit unions,¹⁰ whether acting for their own accounts or as fiduciaries, and broker-dealers if registered under the Exchange Act and purchasing for their own accounts. As the Commission indicated in the Reg. D Release, there does not appear to be a compelling reason to distinguish these institutions from banks, insurance companies or registered investment companies which are already defined to be accredited. Most of the states in their institutional investor exemptions already exempt securities offerings to these categories of investors.¹¹

One of the commenters noted that employee benefit plans within the meaning of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") which have savings and loan associations as plan fiduciaries were not proposed to be treated the same as

¹ A uniform definition of "accredited investor" is used for both section 4(6) and Regulation D. Section 2(15) of the Securities Act and Rule 215, 17 CFR 230.215 together provide the same listing of investors as Rule 501(a). Amendments to Rule 215 are made today in order to maintain the consistency.

¹⁰ The Commission's staff interprets the "similar institution" language in section 3(a)(5)(A) of the Securities Act to encompass credit unions whose accounts are insured by the National Credit Union Administration. See, e.g., *In re Idaho Central Credit Union* (January 14, 1977) ("no action" letter from the Division of Corporation Finance). Rather than provide a complete listing in the definition, the Commission has determined to maintain interpretative flexibility through the use of the "similar institution" language.

¹¹ See Uniform Securities Act, Section 402(b)(8). This section exempts any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. Forty-five or more of the states either use these terms as included in the Uniform Securities Act or specifically include savings and loan associations, credit unions and broker-dealers as institutional investors.

¹ Release No. 33-6683 (January 16, 1987) [52 FR 3015] ("Reg. D Release"). The comment letters received and a summary of the comments (File No. S7-1-87) are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

² 17 CFR 230.501-230.506.

³ 15 U.S.C. 77a et seq.

⁴ 15 U.S.C. 77b(15); 17 CFR 230.15; 17 CFR 230.501.

⁵ 17 CFR 230.251-230.264.

⁶ Release No. 33-6759.

⁷ 15 U.S.C. 78a et seq.

⁸ 15 U.S.C. 80a-1 et seq.

ERISA plans with, for example, banks as such fiduciaries. This omission was not intentional. Consequently, the language of both Rules 215 and 501(a) has been amended to indicate that ERISA plans which have savings and loan associations as plan fiduciaries are accredited investors. The Staff's interpretation¹² that a self-directed employee benefit plan, where investment decisions are solely within the control of an accredited investor, is itself an accredited investor, has been codified.

The proposal to accredit corporations, partnerships and business trusts with total assets in excess of \$5 million was generally approved by the commenters. The formation of the entity may not be for the purpose of making the particular investment in question.¹³ Since the adoption of the regulation, certain non-profit organizations with total assets in excess of \$5 million have been accredited investors; for-profit organizations will now be treated in the same way.

The Commission asked for comments as to the desirability of including officers who, while sophisticated, served no policy-making role for a company within the ranks of accredited investors. A number of commenters felt that the expansion would be desirable. Nonetheless, the Commission has decided not to accredit these officers at this time, since it has not been persuaded that, absent a policy-making function characterizing an executive officer position, employees regardless of their titles meet the standards of access to information and ability to bear the risk which are necessary to achieve the status of accredited investor.

A joint-income test for purposes of accrediting natural persons was proposed at the \$300,000 level. Many commenters suggested a lower level for the joint income test along with lowering the existing individual income and net worth tests. Others have expressed their concerns about the appropriateness of the current levels in the income and net worth tests and that such levels may not represent a level of financial wherewithal which equates with an ability to get information about an issuer. In the absence of compelling empirical data establishing the financial sophistication of natural persons with lower incomes and net worth, the

Commission has determined to make no further revisions to the natural persons accreditation standards. The joint-income test of \$300,000 has been adopted.

Under the new provisions, trusts may be accredited if they have \$5 million in total assets and have investment decisions made by a sophisticated person. The proposal to limit the trust's purchase to 10 percent of its total assets has not been adopted because general fiduciary principles and legal investment laws appear to be sufficient safeguards against concentration abuses which might arise. In addition, as proposed, a trust formed solely to make the investment would not be accredited under this provision.

The Commission in the proposing release advised that consideration was being given to eliminating the \$150,000 purchaser item set forth in Rule 501(a)(5), given anomalies with the net worth test, and concerns that size of purchase alone, particularly at the \$150,000 level, does not assure sophistication or access to information. While some persons previously accredited would no longer be accredited (i.e., individuals with net worths of \$750,000 but less than \$1 million, and corporations, partnerships, and trusts which do not meet the new standards but have \$750,000 in net worth), many of the persons who used the \$150,000 purchaser item will now become accredited investors by virtue of the revisions to Rule 501 made today. Therefore, the \$150,000 purchaser accreditation standard is rescinded.

B. Rule 504

Both of the proposals relating to Rule 504 have been adopted without change. Thus, the \$500,000 ceiling is now increased to \$1 million as long as no more than \$500,000 worth of securities are offered and sold without registration under states' securities laws.

The modification which broadens the scope of permissible general solicitations in Rule 504 offerings to states which have no registration procedure or one which does not provide for registration and delivery of a disclosure document prior to sale has been adopted. The rule has been modified to make clear that the offering must be made in the state of registration in addition to the state which has no registration procedure, so as to minimize forum shopping. As adopted the rule also is intended to accommodate offerings in large metropolitan areas where the central jurisdiction has no registration process but the surrounding jurisdictions do, e.g., New York and the

District of Columbia. Sales in non-qualifying states could not exceed the \$500,000 ceiling for purposes of Rule 504.

C. Disqualification Provisions

The Commission solicited comments about imposing disqualifiers in Rule 506 offerings which would be similar to those currently applicable to Rule 505 offerings. The request for comments was in response to a suggestion by representatives of the North American Securities Administration Association, Inc. ("NASAA")¹⁴ who believed that such a provision might assist in getting the uniform limited offering exemption ("ULOE"), an official NASAA policy guideline,¹⁵ adopted by more of the states. The commenters were almost unanimously opposed to the suggestion. No state commented on this issue. While NASAA has not withdrawn its support for this proposal, it is not clear to the Commission that the adoption of this proposal would encourage a significant number of additional states to adopt ULOE.¹⁶ Thus, no change to the current system is being made at this time.

D. Disclosure for Offerings Not in Excess of \$2 Million

The Commission asked for and received some comments about the value of a reduced level of disclosure for non-reporting company offerings of a relatively small dollar amount. As stated in the Reg. D Release, when the Commission initially proposed the regulation in 1981¹⁷ a reduced level of disclosure was set for offerings under \$1.5 million, tied to Regulation A disclosure standards but requiring certified financial statements. Because the need for an additional level of disclosure standards was not compelling, measured by the public comments at the time, the Commission did not adopt the proposal. Now, however, it appears that there would be some benefit to another level of disclosure under the regulation as long as investor protection is not being compromised. The comments in response to the Reg. D Release support

¹⁴ NASAA is an association of securities commissioners from each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces.

¹⁵ CCH NASAA Rep. § 6201 at 6101. Such a guideline represents endorsement of a principle which NASAA believes has general application. NASAA does not have the power to enact legislation, promulgate regulations or otherwise bind legislatures or administrative agencies.

¹⁶ The Commission understands that a majority of states now apply disqualification provisions to Rule 506 offerings.

¹⁷ Release No. 33-6339 [August 7, 1981] [46 FR 41791].

¹² In re Diane P. Weiss (December 21, 1983) (interpretative letter from the Division of Corporation Finance.)

¹³ This amendment, as well as the revision to accredited trusts *infra*, makes no change in the availability of Rule 215(h) or Rule 501(a)(8) which accredit entities, all of whose equity owners are otherwise accredited.

this position. Therefore, for offerings not in excess of \$2 million, the information required in Regulation A offerings will satisfy the requirements of Rule 502(b)(2) if the issuer provides investors with a certified balance sheet, dated within 120 days of the commencement of the offering.

E. Other Revisions

All of the proposed technical revisions have been adopted. These changes included the clarification of the "aggregate offering price" definition in Rule 501(c), the single counting of non-contributory employee benefit plans in Rule 501(e), and keying the disclosure requirements to a \$7.5 million level in Rule 502(b). Further, more Commission registration statement forms now are specified as being appropriate to satisfy the disclosure obligations of reporting companies under the regulation. For business combinations, the Commission's specific registration statement form is specified as the appropriate guideline.

II. NASAA Cooperation

In the proposing release, the Commission acknowledged NASAA's cooperation. Because Regulation D provides the framework for ULOE, such cooperation is invaluable to the goal of uniform application of the exemption at both the state and federal levels. The Commission understands that NASAA's State-Federal Coordination Committee and Disclosure Standards Committee will consider the Commission's final adoption today, with a view to recommending parallel changes to ULOE. The cooperation of NASAA in these efforts is appreciated and greater uniformity between the state and federal systems of securities regulation will ultimately be achieved, promoting ever increasingly efficient capital formation processes consistent with the protection of investors.

III. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act regarding the revisions to Regulation D has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposing release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

IV. Cost-Benefit Analysis

No specific data was provided on the Commission's request for costs and benefits of the proposals; yet, it appears that the revisions will work some savings by increasing the classes of accredited investors, raising the Rule 504 ceiling and reducing the level of disclosure requirements for offerings that do not exceed \$2 million.

V. Statutory Basis, Text of Amendments and Authority

The amendments to the Commission's rules are being adopted pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s. * * *

2. Section 230.215 is amended by revising paragraphs (a), (c) and (h), removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), revising newly redesignated paragraph (f), and adding a new paragraph (g), as follows:

§ 230.215 Accredited investor.

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or

similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

3. Section 230.501 is amended by revising paragraphs (a)(1), (a)(3), (a)(8), and the first sentence of paragraph (c), removing paragraph (a)(5), redesignating paragraphs (a)(6) and (a)(7) as (a)(5) and (a)(6), revising newly redesignated paragraph (a)(6), and adding new paragraphs (a)(7) and (e)(3) before the Note as follows:

§ 230.501 Definitions and terms used in Regulation D.

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(3) Any organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in § 230.506(b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities.

(e) *Calculation of number of purchasers.*

(3) A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

4. Section 230.502 is amended by redesignating paragraphs (b)(2)(i)(A), (b)(2)(i)(B), and (b)(2)(i)(C) as paragraphs (b)(2)(i)(B), (b)(2)(i)(C), and (b)(2)(i)(D) respectively, adding a new paragraph (b)(2)(i)(A), revising the paragraph headings of newly redesignated (b)(2)(i)(B) and (C), amending newly redesignated (b)(2)(i)(D) by changing the reference "(b)(2)(i)(A) or (B)" to read "(b)(2)(i)(B) or (C)", and revising paragraphs (b)(2)(ii)(B) and (b)(2)(vi) as follows:

§ 230.502 General conditions to be met.

(b) *Information requirements.*

(2) *Type of information to be furnished.*

(i) * * *

(A) *Offerings up to \$2,000,000.* The same kind of information as would be required in Part II of Form 1-A [17 CFR 239.90], except that the issuer's balance

sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(B) *Offerings up to \$7,500,000.*

(C) *Offerings over \$7,500,000.*

(ii) * * *

(B) The information contained in an annual report on Form 10-K under the Exchange Act or in a registration statement on Form S-1 [17 CFR 239.11], Form S-11 [17 CFR 239.18], or Form S-18 [17 CFR 239.28] under the Act or on Form 10 [17 CFR 249.210] under the Exchange Act, whichever filing is the most recent required to be filed.

(vi) For business combinations or exchange offers, in addition to information required by Form S-4 [17 CFR 239.25], the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with paragraph (b)(2)(i) of this § 230.502.

5. Section 230.504 is amended by revising the section heading, paragraph (b), and Notes 1 and 2, and adding a new Note 3 as follows:

§ 230.504 Exemption for Limited Offerings and Sales of Securities Not Exceeding \$1,000,000.

(b) *Conditions to be met—(1) General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 through 230.503 except that the provisions of §§ 230.503 (c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made.

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the

securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure, before the sale of securities.

(2) *Specific condition—(i) Limitation on aggregate offering price.* The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed \$1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504 in reliance on any exemption under section 3(b) of the Act or in violation of section 5(a) of the Act, provided that no more than \$500,000 of such aggregate offering price is attributable to offers and sales of securities without registration under a state's securities laws.

Note 1.— The calculation of the aggregate offering price is illustrated as follows:

Example 1. If an issuer sells \$500,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504, it would be able to sell an additional \$500,000 worth of securities either pursuant to state registration or without state registration during the ensuing twelve-month period, pursuant to this § 230.504.

Example 2. If an issuer sold \$900,000 pursuant to state registration on June 1, 1987 under this § 230.504 and an additional \$4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the \$1,000,000 limit within the preceding twelve months.

Note 2.— If a transaction under this § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold \$1,000,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504 and an additional \$500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

Note 3.— In addition to the aggregation principles, issuers should be aware of the applicability of the integration principles set forth in § 230.502(a).

By the Commission.

Jonathan G. Katz,

Secretary.

March 3, 1988.

[FR Doc. 88-5131 Filed 3-9-88; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6759; File No. S7-4-88]

Regulation D Revisions

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is publishing for comment additional revisions to Regulation D. The regulation provides for three different exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act") for certain limited offerings of securities. The revisions proposed here involve additions to the "accredited investor" definition, a change in the requirements which are designed to reflect the "restricted" character of securities issued in a Regulation D transaction, and the deletion of the filing of a Form D as a condition to the Regulation D exemption. A new Rule 507 is proposed which would disqualify an issuer from the use of any of the Regulation D exemptions if it has been found to have violated Rule 503 which will still require the filing of a Form D no later than fifteen days after the first sale of securities. A new rule 508 is also proposed which would provide that minor and isolated failures to comply with the requirements of Regulation D will not necessarily cause the loss of an exemption. In a companion action today, a number of revisions to the regulation have been finalized.

DATE: Comments must be received on or before May 13, 1988.

ADDRESS: Comment letters should refer to File No. S7-4-88 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments will be available for public inspection and copying in the Commission's Public Reference Room at the above address.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen M. O'Brien, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing several revisions to Regulation D,¹ which

exempts certain transactions from the registration requirements of the Securities Act.² The revisions would add to the list of accredited investors certain plans established and maintained by the governments of the states or their political subdivisions as well as their agencies and instrumentalities, for the benefit of their employees. The list of steps previously required to be followed to assure the "restricted" status or nontransferable nature of securities issued in Regulation D is proposed to be no longer mandatory, although they would still demonstrate satisfactorily that reasonable care has been taken to assure that purchasers are not underwriters. The filing of Form D³ as a condition to the Regulation D exemption is proposed to be eliminated. In lieu thereof, disqualifying provisions would be added which would prohibit an issuer, found to have violated the filing requirement, from using Regulation D in the future. Pursuant to another proposed provision, isolated and minor deviations from the requirements in Regulation D that occur despite a good faith and reasonable attempt to comply would not cause an issuer to lose an otherwise appropriate exemption from the registration provisions of the Securities Act.

I. Proposed Revisions to Regulation D

Regulation D is the series of rules, Rules 501-506, which establish three separate exemptions from the registration requirements of the Securities Act. Last January, a number of proposals to amend the regulation were published for comment.⁴ Today, the Commission adopted most of these proposals.⁵ Several matters were raised in the public comments, especially in the area of whether or not a substantial or good faith compliance standard should apply to the regulation, which the Commission had asked about in the original notice of proposed rulemaking.

A. Accredited Investors

A number of commenters in the initial rulemaking from last January noted that states, municipalities, their instrumentalities and agencies, public universities and pension plans for their employees do not qualify for accreditation under section 4(6) of the Securities Act or Regulation D.⁶ The

Commission is proposing to amend Rules 215 and 501 to specifically include in the accredited lists, plans established and maintained by the governments of the states, their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees, when two conditions are met. The plan must have either a bank, savings and loan association, insurance company or registered investment adviser as its plan fiduciary. In addition, the plan must impose requirements governing fiduciary responsibility similar to those established by the Employee Retirement Income Security Act of 1974 ("ERISA").⁷ If such plans have the same kind of fiduciaries, plus the same standards governing investments as ERISA plans, there does not appear to be any reason to prohibit them from being accredited. Because such plans are exempt from coverage under ERISA, they do not presently qualify for accreditation under Rule 501(a)(1), Rule 215(a) or section 2(15)(i) of the Securities Act. The Commission understands, however, that many of the states institutional investor exemptions include pension and profit-sharing plans, without regard to employer identification.⁸ Although the present rule provides that an ERISA plan also may be accredited if it has more than \$5 million in assets, this alternative test is not proposed for the non-ERISA public plans, because unlike ERISA plans, they are not subject to specific regulations and governmental oversight.

Comment also is requested on the issue of including states, their political subdivisions, and agencies and instrumentalities in their own right, and state universities and colleges as accredited investors. Several of the states exempt sales to these kinds of investors.⁹ After considering the comments, the Commission may decide to include one or more of these entities as accredited investors. Alternatively, it may be desirable to include provisions to assure that those included would have the requisite knowledge or sophistication to qualify as accredited investors. Commenters are specifically requested to address the need for

Securities Act combined with Rule 215, 17 CFR 230.215. The proposals today would continue this uniformity by revising Rule 215.

² 29 U.S.C. 1104-1107.

³ Uniform Securities Act, section 402(b)(8).

⁴ E.g., California Administrative Code, Rule 260.104.14 [1 CCH Blue Sky L. Rep. ¶ 11,806]; Release No. 85-2, Michigan Corporation and Securities Bureau [1A CCH Blue Sky L. Rep. ¶ 32,602]; South Dakota Codified Laws § 47-31-88 [3 CCH Blue Sky L. Rep. ¶ 52,229]; Wisconsin Uniform Securities Law § 551.23(8) ([3 CCH Blue Sky L. Rep. ¶ 64,113]).

¹ 17 CFR 230.501-230.506. A number of revisions to the regulation also have been adopted today. Release No. 33-6758.

² 15 U.S.C. 77a et seq.

³ 17 CFR 239.500.

⁴ Release No. 33-6683 [January 16, 1987] [52 FR 3015].

⁵ Release No. 33-6758.

⁶ The Commission uses a uniform definition applicable to section 4(6) and Regulation D. Thus, Rule 501(a) is the same as section 2(15) of the

conditions to such accreditation and the appropriate conditions, e.g., the presence of some specifically named fiduciary; or size of the fund. Comments with regard to other suitability-for-investment standards covering states and these other entities also are invited.

B. Substantial or Good-Faith Compliance

Many comments were received in response to the Commission's solicitation of comments about a standard of good faith compliance with Regulation D. Two revisions are being proposed to be made with what appear to be the principal areas of concern about technical noncompliance. In addition, a new rule is proposed which would provide that the Regulation D exemption for all sales is not lost by minor, isolated failures to comply with requirements in the regulation, where those deviations occur despite a good faith and reasonable attempt to comply. However, the exemption may be lost for a particular sale, if the deviation is significant with respect to that sale.

Comments are requested on each of the proposed revisions. In addition, commenters are requested to address whether a general substantial compliance standard is needed if the proposed revisions regarding the requirements designed to reflect the restricted character of the securities and the deletion of the filing of a Form D as a condition to the Regulation D exemption are adopted. Conversely, commenters should address the need for the latter two proposals if a general, substantial good faith standard is adopted.

(1) Demonstrating the "Restricted" Nature of the Securities

Rule 502(d) indicates that generally securities acquired in a Regulation D transaction have the same restricted status as securities acquired in a transaction under section 4(2) of the Securities Act and cannot be resold without registration or an exemption. In this connection, the issuer is reminded of its obligation to ensure that no distribution of these securities occurs without registration or appropriate exemption and that it take reasonable care to assure that purchasers are not underwriters under the Securities Act. Rule 502(d) lists certain actions which must be taken to reflect such reasonable care, including purchaser inquiries, written notifications to purchasers and legending securities. Inasmuch as compliance with Rule 502 is a condition to a Regulation D exemption, failure to take any of these steps makes the exemption unavailable. Commenters

have frequently characterized this feature of the regulation as one particularly well-suited to be the subject of a substantial or good faith compliance standard.

Under the proposed amendment, the listing in Rule 502(d) would not be mandatory. Taking such actions, however, would be a satisfactory demonstration of the desired reasonable care. In this regard the burden would continue to be on the issuer to demonstrate that reasonable care had been taken to guard against an inappropriate distribution of "restricted" securities and to make certain that investors appreciate the restricted nature of the securities.¹⁰

(2) Removing the Conditions to File Form D and New Rule 507

Rule 503 requires the filing of a notification on Form D within 15 days after the first sale of securities offered in reliance upon an exemption under Regulation D. Rules 504, 505 and 506 each condition the exemption upon compliance with Rule 503. Failure to make the filing in a timely manner makes the exemption unavailable. Commenters have frequently criticized this provision.

As proposed, the filing obligation under Rule 503 would continue but would no longer be a condition to the exemption. In order to provide an incentive for filing the Form D in a timely manner, the Commission is proposing new Rule 507, which would disqualify an issuer from the use of the Regulation D exemptions if it had been found to have violated Rule 503. Proposed Rule 507 has been patterned on Rule 252.¹¹ The Commission would have the authority to waive disqualifications under proposed Rule 507 upon a showing of good cause by the issuer that the Regulation D exemption should not be denied.¹²

(3) Isolated and Minor Deviations From Requirements in Regulation D

Proposed new Rule 508 is designed to provide additional flexibility in Regulation D so that minor, isolated failures in reasonable and good faith compliance efforts would not cause loss of the exemption from the registration requirements of the Securities Act for the entire offering. The exemption would

be lost as to a specific sale affected by the violation, unless the violation is insignificant with respect to that sale. The rule sets forth several examples of violations that could fall within this provision. These examples are intended to highlight the minor nature of these deviations and the necessity for a good faith and reasonable effort to comply with the regulation in its entirety. Moreover, there are critical elements to a Regulation D exemption under the Securities Act, which establish the essence of the exemption; there cannot be any deviation from these requirements. Thus, for example, under Regulation D, limited offerings are contemplated and no general solicitation or advertising would be consistent with the exemptions provided.¹³ The dollar limitations are critical elements of both the Rule 504 and Rule 505 exemptions. Use of either of these provisions by an investment company would be unacceptable; as would the use of Rule 504 by a reporting company. While neither this recitation nor the listing in Rule 508 is exhaustive, they do reflect the kinds of items which are encompassed and not encompassed by the rule.

Comments are requested as to whether the rule should provide, as proposed, that the exemption may be lost for certain offers and sales, if such offers and sales have been directly affected by the violation, even if the exemption is not lost for the offering as a whole. Comments also are requested as to whether defining insignificant to mean isolated and minor is a reasonable approach or whether any definition of the term is needed. Any other comments with respect to the scope of the proposed rule are also invited.

II. NASAA Cooperation

Regulation D serves as the basis for the uniform limited offering exemption ("ULO"),¹⁴ an official policy guideline of the North American Securities Administrators Association, Inc. ("NASAA").¹⁵ More than half of the states have adopted ULOE or an exemption substantially similar to it. The Commission and NASAA continue

¹⁰ There is an exception for certain Rule 504 offerings.

¹¹ CCH NASAA Rep. ¶6201 at 6101.

¹² The obligation to advise purchasers that they have restricted securities comes from Rule 10b-5. 17 CFR 240.10b-5. See Release No. 33-5226 (January 10, 1972) [37 FR 600].

¹³ 17 CFR 230.252.

¹⁴ A similar rule, Rule 503, was proposed in Release No. 33-6726 (July 30, 1987) in connection with a proposed exemption for certain employee compensation arrangements.

¹⁵ NASAA is an association of the securities commissioners of each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces. An official policy guideline represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations or otherwise bind the legislatures or administrative agencies of its members.

to encourage the remaining states to adopt ULOE.

The proposals made today by the Commission have been provided to representatives of the NASAA State-Federal Coordination Committee. The Commission appreciates the cooperation of NASAA and its Committee in considering these proposals as an addition to the ULOE policy statement.

III. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding these Regulation D proposals.

The analysis notes that the revisions to the "accredited investor" definition, and the elimination of the filing and certain other conditions to the exemptions are proposed as a result of public comment and the Commission's experience. The proposal of Rule 507 is designed as a complement to the elimination of the filing condition to encourage continued compliance with Rule 503. The proposal of Rule 508 is intended to provide that the exemption will not be lost if there are inadvertent minor and isolated failures to comply with the requirements. The objective of unifying exemptive schemes at the states and federal levels such as through a coordinated ULOE policy guideline and Regulation D is noted, since it can aid smaller issuers in the capital formation process. The proposals add no new reporting, recordkeeping or other compliance requirements and in fact may eliminate the need to provide certain information.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W. Washington, DC 20549.

IV. Cost-Benefit Analysis

To assist in a full evaluation of the costs and benefits of these proposed revisions to Regulation D, the Commission seeks views and other data about these issues. The Commission believes the proposals if adopted would provide additional cost savings to issuers without compromising investor protection. The proposed revisions liberalizing certain conditions to the exemptions may produce savings through a reduction in the number of inadvertent late filings of Forms D causing a loss of the Regulation D exemption.

V. Statutory Basis and Text of the Proposed Amendments

The amendments to the Commission's rules are being proposed pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

(Arrows > < indicate proposed additions, bracket [] indicate proposed deletions)

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continue to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

2. Section 230.215 is amended by revising paragraph (a) as follows (the introductory text is republished):

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii)) shall include the following persons:

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; > any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment adviser and the plan establishes fiduciary principles the same as or similar to those contained in sections 404-407 of Title I of the Employee Retirement Income Security Act of 1974; < an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

solely by persons that are accredited investors;

3. Section 230.501 is amended by revising the introductory text and paragraph (a)(1) as follows:

§ 230.501 Definitions and terms used in Regulation D.

As used in Regulation D (§§ 230.501-230.508 <), the following terms shall have the meaning indicated:

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; insurance company as defined in section 2(13) of the Act; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; > any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if investment decisions are made by a plan fiduciary which is a bank, savings and loan association, insurance company, or registered investment adviser and the plan establishes fiduciary principles the same as or similar to those contained in sections 404-407 of Title I of the Employee Retirement Income Security Act of 1974, < employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

4. Section 230.502 is amended by revising the introductory paragraph and paragraph (d) introductory text and added a concluding paragraph as follows:

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made

under Regulation D (§§ 230.501—
>230.508 <):

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of the Act, which reasonable care > may be demonstrated by < [shall include, but not be limited to,] the following:

- (1) * * *
- (2) * * *
- (3) * * *

> While taking these actions will establish the requisite reasonable care, they are not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. <

5. Section 230.504 is amended by revising paragraph (b)(1) as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding \$1,000,000.

(b) *Conditions to be met—(1) General conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 > and 230.502, < [through 230.503,] except that the provisions of §§ 230.502 (c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a

disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure, before the sale of securities.

6. Section 230.505 is amended by revising paragraph (b)(1) as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding \$5,000,000.

(b) *Conditions to be met—(1) General conditions.* To qualify for exemption under this § 230.506, offers and sales must satisfy all the terms and conditions of § 230.505, offers and sales must satisfy all the terms and conditions of §§ 230.501 > and 230.502, < [through 230.503.]

7. Section 230.506 is amended by revising paragraph (b)(1) as follows:

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

(b) *Conditions to be met—(1) General conditions.* To qualify for exemption under this § 230.501 > and 230.502, < [through 230.503.]

8. By adding a new § 230.507 to read as follows:

§ 230.507 Disqualifying provision relating to exemptions under §§ 230.504, 230.505 and 230.506.

(a) No exemption under §§ 230.504, 230.505 or 230.506 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or

permanently enjoining such person for failure to comply with § 230.503.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

9. By adding a new § 230.508 to read as follows:

§ 230.508 Isolated and minor deviations from requirements in Regulation D.

(a) A failure to comply with a condition or requirement of this Regulation D that is insignificant with respect to the offering as a whole will not result in the loss of the exemption under §§ 230.504, 230.505 or 230.506 if the issuer can show a good faith and reasonable attempt to comply with all provisions of the Regulation. No exemption would be available with respect to an offer or sale to a particular person unless the failure to comply was insignificant with respect to that offer or sale, as well as to the offering as a whole.

(b) For purposes of this rule, insignificant means an isolated and minor deviation from requirements.

Note.—A failure to comply with a condition or requirement of Regulation D that is insignificant with respect to the offering as a whole may be illustrated as follows:

Example 1. Immaterial written information provided to an accredited investor is omitted from the description required to be delivered to non-accredited investors.

Example 2. A purchaser representative fails to disclose a relationship with the issuer prior to a purchaser's acknowledgement of the representative but does so before the purchaser subscribes for an investment.

Example 3. One purchaser, as a result of a clerical error, fails to receive the information package prior to the completion of the sale.

By the Commission.

Jonathan G. Katz,

Secretary.

March 3, 1988.

[FR Doc. 88-5132 Filed 3-9-88; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE
COMMISSION****Forms Under Review of Office of
Management and Budget**

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

*Upon Written Request Copy
Available From:* Securities and
Exchange Commission Office of
Consumer Affairs, Washington, DC
20549.

Revision

Form D and Regulation D

File No. 270-72

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for clearance proposed revisions to Regulation D (17 CFR 230.501-506) which would increase the numbers of accredited investors and the number of offerings eligible for exemption, thus increasing the numbers of Forms D required to be filed. The respondents are issuers who elect to offer and sell securities pursuant to section 4(6) of the Securities Act of 1933 ("the 1933 Act") or pursuant to Regulation D under the 1933 Act. Currently there are 22,225 Forms D filed at 16 burden hours per form for a total of 355,600 burden hours.

Submit comments to OMB Desk
Officer: Mr. Robert Neal, (202) 395-7340,
Office of Information and Regulatory
Affairs, Commerce and Lands Branch,
Room 3228 NEOB Washington, DC
20530.
March 3, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5281 Filed 3-9-88; 8:45 am]

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Thursday, March 10, 1988

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